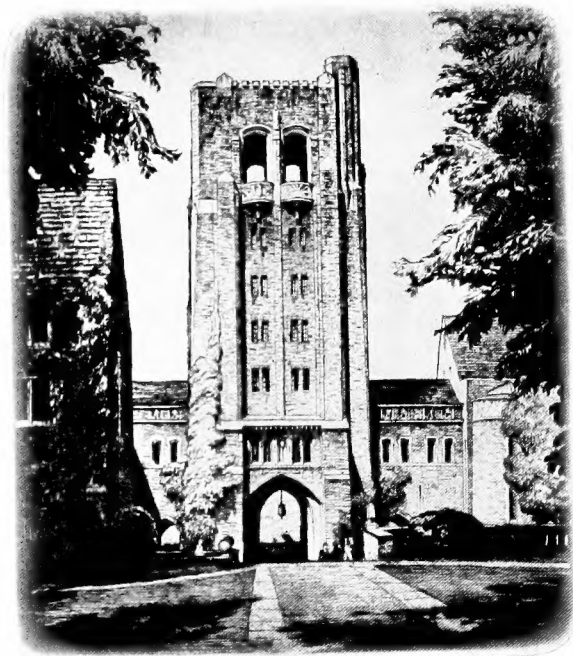


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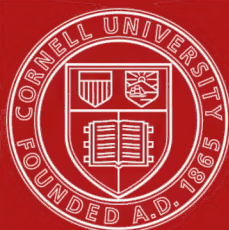
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THE EVOLUTION OF GOVERNMENTS AND LAWS

EXHIBITING THE GOVERNMENTAL STRUCTURES
OF ANCIENT AND MODERN STATES, THEIR
GROWTH AND DECAY AND THE LEADING
PRINCIPLES OF THEIR LAWS

BY
STEPHEN HALEY ALLEN

“ Quis custodiet ipsos custodes ? ”

“ Mens, et animus, et consilium et sententia civitatis, posita est in legibus.”

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CHAPTER XXIV

THE BRITISH EMPIRE

The earliest inhabitants of the British Isles of whom we have any accounts are styled Britons and are not classed as Aryans. The first settlers of the latter stock are said to have been Celts. Caesar says that in his time the inhabitants of the interior were accounted descendants of the natives of the island, while the maritime portions of the island were peopled by invaders from Belgium, who had settled down and commenced to cultivate the soil. He says the country was very populous and the buildings similar to those of Gaul, that they had many cattle, that they used brass or iron bars for money, that the inhabitants of Kent (*Cantium*), did not differ much in customs from the Gauls, that many of the inhabitants of the interior did not sow grain but lived on milk and meat and wore skins for clothing, that they painted themselves dark blue, wore their hair long, and shaved all but the upper lip, that ten or twelve brothers or even father and sons had wives in common. They used not only horses but also a kind of chariot in battle and were brave and strong. It is impossible to tell what race of men first inhabited the island. In the earliest accounts we read of Britons, Picts and Scots as antedating the advent of the Romans. Sometimes all are classed as Celts, and again the Britons are spoken of as allied to the Basques of the Pyrenees. Ireland was peopled by Celts and, while authentic history of it in the time of Caesar is wanting, popular traditions, handed down apparently with more than ordinary trustworthiness, indicate that the people of Ireland were at that time better organized and more prosperous than those on the larger island. In religion the people of both islands were Druids, with rites corresponding with those of the Celts of France. The organization of society was essentially tribal, with the authority of chiefs enlarged or con-

tracted according to individual capacity and the exigencies of their wars. The Druid priests exercised much influence and authority, of which, however, we have no very accurate account.

The subjugation of England and of that part of Scotland south of the Clyde and Forth was completed by Agricola about A.D. 84. He even extended his operations into Sterling and Perth and constructed a line of forts from the Clyde to the Forth. In his conquests he employed five legions, which with auxiliaries and cavalry are estimated to have made an army of 50,000, indicating much resistance to the Roman advance. The period of Roman occupation was barren of any events of interest in the line of our investigation. Christianity was introduced into the island, and the people seem to have accepted the religion of their conquerors much as they did their system of government. No peculiarities of administration and no modifications of Roman law to conform to the peculiar circumstances or genius of the natives are mentioned, nor was literature worthy of mention produced. Britain was merely a Roman province, deemed of minor importance. About A.D. 400 the Roman legions were withdrawn from the island and the natives were left free.

The Roman occupation of Great Britain was unproductive of beneficial influence on the native population. It did not come till the republic had departed and the military despotism had taken its place. The principal end sought by the Romans was the collection of taxes. Landowners were required to pay a state rent on their estates of one-tenth, afterward increased to one-seventh and even one-fifth the annual produce. In addition to this corn for the soldiers and entertainment for officials on their journeys were required, and the burden of maintaining the roads and bridges fell on the landowners. Traders were taxed on their goods and craftsmen and laborers paid poll taxes. Customs were collected on imports and exports and one per cent on produce sold in market. Percentages were often greatly increased by the officials who gathered the taxes, the excess going to their private use. Rome merely gave the people such protection and order as a

military despotism affords. It did nothing to educate or elevate, save as the Christian religion followed the legions toward the close of the period of Roman rule. The quality of this Christianity may have been somewhat higher than the religion of the Druids, but it was closely associated with the slavery and grinding oppression of imperial Rome.

In military organization they do not appear to have profited from contact with the Romans. The Dutch tribes from the low countries soon commenced the conquest of the island, the Jutes being the first and gaining a permanent foothold in Kent under the leadership of Hengest and Horsa. The date of their landing is given as about 449. The Saxons then came and settled around them in Sussex, Essex and Wessex. Later came the Angles and made way farther north in East Anglia, Mercia and Northumberland. Historians speak of the establishment of kingdoms, but the territory occupied by and the number of people included within the so-called kingdoms hardly warrant the use of such a term. The system of organization appears to have been a modification of that which had prevailed among the Germanic tribes, adapted to the enterprise of gaining a foothold in a new country. Each band of invaders came with wives, children and chattels and had its leader and chief men, but the power of the state resided in the whole body of freemen. They did not seek the subjugation of the native tribes and the establishment of a government over them, such as the Romans had maintained, but lands for themselves. They therefore killed or drove out the natives who opposed them. The settlements they established were mainly devoid of admixture with the native people, except from captive women and a few British slaves. The movement was a transplanting of Germanic tribes on English soil and crowding the native population out, in much the same manner that their descendants came to America and took land for occupation from the Indians. The process of settlement in each case was gradual and accompanied by exterminating wars. New territory was conquered as the numbers of Saxons and Angles increased. They came as heathens worshipping Woden and the other

German gods. The process of conquest was slow, but continuous till about the beginning of the seventh century, when the Saxons and Angles had become dominant over the greater part of England and southern Scotland. The introduction of Christianity among the conquerors is mentioned as contemporaneous with the change from a process of extermination of the Celts and Britons to one of more civilized conquest. Though the whole island is now under the rule of the same government, the descendants of the ancient inhabitants, who preceded the Saxons and Angles, still abide in Wales, Cornwall, Scotland and to some extent in other parts, with surprisingly little admixture of Dutch blood. The invaders preserved their own language, laws and customs, as well as purity of race, taking but little of either from the ancient inhabitants or the remnants of Roman civilization. They brought with them the German system of land tenure, the title resting primarily in the community, which annually assigned to each his special holding for purposes of tillage and habitation, reserving the pastures and timber lands to be used in common. The custom of changing private allotments did not long continue. The mark or township was the primary political division, having its assembly of freemen by which its affairs were regulated and its common property managed. The division of the country into tithings, hundreds and counties did not take place till later, after a central authority had been established. The invading Saxons and Angles came under the leadership of their *Hertogen* in war who in peace were their *ealdormen*. There were the freemen, who were recognized as entitled to take part in all public assemblies as well as to fight in the wars, an intermediate class not members of the tribes, and the thralls or slaves. Some distinctions existed among freemen, forming the germs of future nobility. The military leader, there as on the continent, had his immediate personal followers, who gave him added strength and importance, and on whom he conferred special favors as a result of successful military operations. No right of hereditary leadership was recognized, but the free choice of the people usually fell on members of the chief families, reputed

descendants of Woden. As the successful leaders extended their conquests and increased their followings a greater measure of authority was naturally assumed. The public assembly of a mark might well include all the freemen, but when the authority of a single man was recognized throughout a large district and by a great number of people, only the principal men attended the national assemblies. The development of kingly authority among the new masters of the soil was slow and gradual, and came as a result of military combination. In course of time the forces of many communities, led by their separate chiefs, were united under a superior leader, who was styled a *cynig* (king), but this authority came from the people who chose him, and his influence depended largely on his personal qualities. In consonance with the prevailing ideas of equality of rights among freemen, the law of inheritance gave to each male child an equal share in the possessions of the parent. No rule of primogeniture was thought of. Captives and their offspring were slaves, without political or property right.

There were no written laws. Custom and tradition alone furnished the rules to be observed. These recognized payment of *weregeld* for the killing of another, the amount depending on the rank of the person slain. Of the elaborate system of feudal tenures or of the nice legal rules which developed later, the earliest settlers knew nothing. They were neither town builders nor traders, but each primary community occupied its small district, tilled the soil, tended its herds and lived on the products of domestic industry. The assembly of the freemen of the mark exercised primitive legislative, executive and judicial functions and regulated local affairs. It may be here noticed that in Kent, which was first occupied and soon shielded by the Saxons on the north and west from the attacks of the natives, primitive customs and ideas were better preserved and more persistent than among those who came later and fought harder. The custom known as gavelkind, by which the lands of the father are divided among all his sons instead of descending to the eldest alone, may be mentioned as a significant one. This first conquest under the leadership of Hen-

gest and Horsa is spoken of sometimes as the establishment of a kingdom, but it was a kingdom in which the assembled freemen ruled. The west Saxons, who settled in 495 in Hampshire under the leadership of Cerdic and Cynric, their *ealdormen*, took the lead in developing a central authority from which the first kings of England came into being.

For brevity let us term all the Dutch invaders,—Jutes, Angles and Saxons—as Saxons, though the name be not strictly correct. These with the Celts are the main progenitors of the present population of the British Isles. It is difficult, and in fact impossible, to give a full and definite description of the organization of the Celtic tribes at or prior to the Saxon invasion. The accounts we have of them are, to a considerable extent, deductions from much later observations and the accounts of the Celts in France at a considerably earlier date. That polyandry existed among them seems well established, both by the direct statement of Caesar and the prevalence of the custom in later times. Polygyny was also allowable. The Saxons, in common with the other Germanic tribes, were monogamists, and the comparative purity of their domestic relations is beyond doubt one of the greatest sources of their national strength. Among the Celts, however, women were not enslaved, but their relative position seems to have been about as high as with the Germans. Relationship was traced by the female line and female leaders, and later rulers, were not uncommon. The women were also often accorded the privilege of going to war along with the men, and were not wanting in courage. The joint family (Irish *fine*) owning and cultivating a family estate under the general direction of an elective head, usually the oldest or most capable male member of the house, is sometimes mentioned as the political unit in Celtic society. This family was a kind of general partnership with a common estate, protecting its members and answering for their conduct, and might include several generations and persons removed several degrees from a common ancestor. From this joint family the petty tribe or village (*tuath*) developed, and from the combination of more or less of these according to circumstances, the vicissi-

tudes of war and the possession of land, the tribe was formed. Over the village (*tuath*) a chief was chosen and over the tribe a king, who might be deposed. His authority was small, but grew with time, the increase of contributions and the exercise of military power. A singular custom was that of following the installation of a king by the election of a *Tanist*, who would be his successor. In case the *Tanist* died before the king another was chosen at once, so that there was always a successor to watch the king, often chosen from a rival line. The most substantial basis for the king's power in early times was his possession of a portion of the tribal lands in addition to his private property. To this was added a right to quarter on his subjects and a system of tribute in kind from the family to the village king and from him to the over king, amounting in later times to a sort of feudal system of land tenure. The whole system seems to have been based on the idea of relationship and the selection of heads of the households. Provision for every member of a household was recognized as incumbent on the joint family, and the chief or king was but the head of the enlarged household. Neither popular assemblies nor judicial tribunals were known, the gatherings were domestic or tribal, and general law was wanting. Family and tribal customs furnished the rules for the enjoyment of property and for the domestic relations. The tribal or clan system continued in full force among the Celts of Scotland to a much later time than elsewhere. In Ireland the standing of the individual came, at a comparatively early date, to depend on his possessions. The representative citizen was a landowner or member of a land-owning family, the possessor of twenty-one cows and styled *aire*, or *bo-aire* where he had only the cattle. A higher rank was that of *flath*, based on superior holdings in severalty. The general system, however, was one of common tenure and cultivation by a greater or less number of kindred people.

The Saxon invaders came as pagans seeking an abiding place. They brought with them their families, their customs, and their race characteristics. Purity of domestic relation is mentioned as one of these. Though monogamy was the

rule, there were those among the rich and powerful who indulged in a plurality of wives, but such cases were exceptional in any class. It seems beyond doubt that women were more highly respected by them than among most barbarous and some more cultured nations, yet it must be remembered that they were a coarse and brutal people and the mating was not in accordance with refined or romantic notions. The husband bought his wife, paying a part of the price to her father and a part as a provision for her. If she misconducted herself after marriage, the husband could expel her from his home, if another man ran away with her, he was required to pay the husband the same penalty as for taking a life and in addition to buy him another wife. Over his children the father had full power, but over his wife his authority was limited by the claims of her relatives. If she was murdered, they were entitled to the *were-geld*, and if she committed murder they were required to pay for it. A marked difference between the parental authority of the Roman and of the German father was that, while that of the former continued through life, that of the latter ended when the son was invested with shield and spear and became a warrior and citizen. For crimes committed the right of redress was in the injured party's own hands, subject to exemption from his vengeance by payment of money. For murders a scale of prices was fixed, graduated according to the rank of the person killed. The principle of the *lex talionis* was recognized, if payment was not made, and life for life, eye for eye, etc., were exacted.

In the social scale four orders are mentioned. There were slaves, *theows* or thralls, but these were not numerous, nor was their condition one of great hardship. They were assigned homes and required to till the land and return part of the produce to the master. Offenses against slaves were punishable by fines, graded according to the rank of the master. Next in order above them were the *loet*, theoretically free but bound to the land and the service of the lord. Their persons could not be sold as could the slaves, but they could neither desert the lord nor his land, which they were bound to till for his benefit in part and also to do him services of various kinds.

The *ceorl* was the freeman and the soldier, entitled to his allotment of land and to his vote in the public assembly and bearing his share of public responsibility. At the top of the social ladder was the *eorl*, for whose life triple the sum of *were-geld* paid for that of a *ceorl* was required. Just what formed the basis of this distinction at first, it is hard to tell, but later it was based on land tenure. This rank does not appear to have carried with it any political power, but merely a higher social status and protection by higher fines for injuries sustained. Political distinction among the tribes at the time of the invasion began and ended with the *ealdormen*, called in war *hertogen*, chosen leaders of the free warriors. In considering this organization of society it must be borne in mind that the principles of its construction were not declared by any great recognized legislative or governmental authority, but resulted from the environments and peculiarities of the people. The petty kings and the feudal system, which developed later, came as products of new environments and continued military operations. Arbitrary powers are rarely conferred by the people, but are usually assumed by military leaders having a sufficient organized force to compel obedience to their authority and submission to the terms imposed. In studying the evolution of kingly rule in Britain we shall make better progress, if we wholly disabuse our minds of the idea that in its inception it rested on any moral basis. The Saxon invaders came seeking homes for themselves at the expense of the natives. They offered no price but took the lands by force. They killed or drove away the ancient inhabitants, robbing them of land and all other property they could find. The utmost limit of their mercy was to let a few live in slavery. The leaders of these invading tribes were bloody and merciless, and their followers shared the same spirit. Of justice based on any moral foundation they had little if any conception. Might was the sole test of right in the struggle with the Celts, and soon became the basis of rights asserted by the leaders. There, as on the continent, favorite leaders were surrounded by followers closely attached to their persons and interests, classed as *gesiths*, comrades, or *thegns*, servants.

These gave the chief his nucleus of power and were often the cause of his selection as leader of the tribe in war. The *gesiths* ate at the lord's table, lodged in his house, were his companions in battle during war and in hunting, drinking and gambling in times of peace. The *thegns* were necessarily instruments of his will and dependants on his table. For the support of these dependants the leader required an increased allotment of land, and with their support he was in a position to enforce his demands for a large share of any newly acquired territory. Early in the history of the Saxon conquest there came to be two classes of holdings, those of the freemen with their system of common tenure, changing allotments for cultivation and regular rotation of crops; and the holdings of the favored leaders and their immediate companions. There soon came to be *folk-lands*, and *boc-lands*. The *folk-lands* descended to the heirs and could not be devised away from them, while the *boc-lands*, book lands, could be given by will to whomsoever the owner pleased. *Boc-lands* again were often exempted from the common burdens by the terms of the grants. In the earliest periods of Saxon occupancy the new lands were disposed of by the assembly of freemen, and the share of the leader, as well as of the *ceorls*, was determined by the general voice, but, as the following of the *Hertogen* increased and their powers grew, they assumed the kingly title and consulted only the *witan* or council of leading men. At first the holdings of the leaders did not differ from those of other freemen. They had land for their cattle and for cultivation, but no power of taxation and no system by which the tribe was required to contribute to their support. As they came into possession of large allotments of lands, they gradually evolved a system of granting portions to their followers on terms of service and of payment of certain dues. The leaders also naturally became the principal slave owners, and were thus enabled to cultivate larger tracts than the common people. One of the earliest perquisites of the petty kings was derived from fines and forfeited estates. Sometimes these were imposed for real transgressions of just laws, but perhaps more frequently because the king wanted revenue or estates. As the kings

extended their power over greater districts and more people, the influence of the popular assembly on the general affairs of the tribe or petty kingdom diminished and that of the military head grew. The *witan* was more clearly allied in interest with the king than with the freemen. Law-making began, and its purpose was to increase the power and the privileges of the king and his trusted followers. The leading purpose of laws, promulgated as a result of military organization or conquest, is rarely if ever the promotion of justice between all classes, but rather the reverse, the establishment of rules of special privilege casting burdens on the many for the enrichment of the few. The Saxon leaders soon assumed the title of kings and, while still elected and sometimes deposed by vote of the assembled freemen, their powers and privileges grew rapidly. They summoned the national meetings and called out the military force. On their journeys they were entitled to entertainment and could call on the people for carts and animals to transport them. Their *ealdormen* and officers might also do the like. The judicial power, which primarily rested in the assemblies of freemen, was assumed by the *witan* in important matters and then by the king. In the earliest stages of the growth of kingly power the concurrence of the *witan* was necessary, for on its members the king relied for the enforcement of the decision, but with the growth of his power came greater recognition of his right to rule, till he alone decided and others executed his will. The division of the people for state purposes was into townships or tithings and hundreds, containing theoretically and at first perhaps actually ten and one hundred freemen, respectively. The terms, however, soon came to denote territorial divisions rather than actual numbers. In each of these in primitive times public affairs were regulated by public assemblies of the free warriors, who chose their local head men. The township assembly laid off the common land for tillage, assigned to each his share of the common field and ordered the succession of crops and fallow. The hundred was accountable for the preservation of order, the punishment of crimes and came to be the unit for purposes of finance and police. A monthly *gemot* or court was held, at which all the

freemen sat as judges. Later these were presided over by officers appointed by the king the *gerifa*, reeve or sheriff. Above these were the county courts or general assemblies of the people of the counties. These in early times corresponded with general assemblies of the tribes and exercised the sovereign political and judicial power. This power soon passed to the king and his *witenagemot*, which was not a representative body selected by the freemen, but the companions of the king and the richest and most daring members of the state. With the transfer of political power from the body of freemen to the king and his council of followers, in an age when might alone made right, came naturally a change of the purposes of legislation. Common ends and interests were no longer objects to be attained, but special interests and personal privileges. As the various bands of Saxons and Angles followed after the Jutes and drove back the more ancient inhabitants from a large part of the island, jealousies among leaders and a desire for each other's possessions brought on wars between the invading tribes as well as with the Celts, and after the introduction of Christianity and long contact between the races, alliances were sometimes formed in which Scots, Picts and Saxons fought other Saxons for mastery. By the end of the sixth century we read that the Heptarchy had been established, and also that there were seven kingdoms among the Picts, but these cannot be regarded as permanent. War was the favorite pursuit of the leaders and largely of the people. The morals of the times were essentially those of barbarous tribes. Drunkenness and gambling were common vices. The primitive idea of united action against the native Celts for the common benefit faded away as leaders gained power and fought for personal aggrandizement rather than tribal advantage. The democratic customs, which had prevailed on the continent, were not extinguished at a blow, nor entirely at any time, but the growth of kingly power and its necessary attendant, the power of his chief supporters, came rapidly at the expense of primitive democracy. When the law-making power fell into the hands of the kings and their henchmen, they took good care to add to the burdens of the people and increase their

own revenues and powers. Injustice was the purpose of the lawmaker and continued to be for centuries, till an intricate system of most unjust laws was evolved and taught as divinely ordained and devised for the common good. In England, though there have been times when temporal and spiritual power were opposed, in the main the kingly oppressors have found their best and strongest support in the clergy, who have diligently taught obedience and submission to king and church. Education is the sure foundation of any system, whether of government or religion. The people must be taught to obey and to believe. In England the increasing armies of the petty kings became schools, in which free men were taught obedience to the commands of leaders. The churches became schools, in which the divine right of rulers was inculcated and the duty of submission and contribution to the treasury of the king and of the church was constantly proclaimed. In course of time the rights of kings to oppress and of high church officials to enjoy great revenues came to be the only rights discussed, and the fundamental moral principles affecting the just relations of man to man were often entirely lost sight of. Some good men there were in power in church and state at times, but the early rules of advanced and enlarged organization of society were almost exclusively in the interest of the promoters of the organization. The laws of King Ethelbert, who ruled in Kent and the south at the advent of the mission of St. Augustine and was converted under his preaching, are not much but a classification of fines to be paid for murders and thefts committed, graded according to the rank of the party injured, and according the church and clergy protection, even greater than that afforded the king and his officers, that is, punishing offenses against them with even higher fines. The power of the church was rapidly extended, and the spiritual rulership of Rome became a substantial exercise of actual power through the medium of the officials of the church. It would be foreign to our plan to attempt to follow the details, more or less questionable, of the struggles of the kings of Sussex, Wessex, Kent, Mercia, Northumbria and Anglia with each other or with the Celtic population, or the schemes by

which the papal power and the importance of bishops and priests was advanced. It is a dreary tale of cruelty and wrong. Wars ceased to partake of the characteristics which prevailed in the early days of the Saxon advance into England, and became merely struggles for the ascendancy of leaders, where the common people on both sides of the contest suffered, without substantial ground for hope of gain. As time wore on Saxon became opposed to Saxon more than to Celt, and the principal object was to subjugate Saxon states to covetous leaders. The heptarchy was ruled by a varying number of kings till Egbert, trained in the military school of Charlemagne, came to the throne of Wessex and about 827 succeeded in extending his power over all the other states and Wales. His government of the other kingdoms was not through an official system acting under his direction, but by tributary kings, who acknowledged him as their sovereign. The union of all the petty kingdoms, thus effected, was not productive of the advantages of one central government as a protection against outside foes, for he failed to establish a system of military organization adapted to defense against invaders by sea. When Egbert became sovereign of all the Anglo Saxons, nearly four hundred years had elapsed since the advent of the Jutes in Kent. Before this event a new movement of people bearing a different name set in from the Jutland peninsula, whence the Jutes had come. In 793 there was a landing of Northmen at Lindesfarne, perhaps not the first of their incursions. This was followed by landings of Danes and Norsemen at various points in England, Scotland and Ireland and by 832 Thorkel had established himself as king in the north of Ireland at Armagh. The first attacks were merely by marauding bands, but in England, as in Ireland, they came in increasing numbers. About 850 a party wintered on the island of Sheppey, and in the following year, reinforced with 350 ship loads of warriors, they sailed up the Thames, sacked and burned London and Canterbury. Permanent settlements were effected about 866, and the Danes in large force invaded East Anglia and thence overran Deira and Northumbria. The invaders were worshippers of Woden and the heathen gods, whom the Saxon

invaders of four hundred years before had worshipped, and they were merciless to the clergy as well as the laity. Mere piratical plundering and murdering in course of time became converted into the greater devastation of continued war with merciless destruction of all who came in their way. By 876 a disposition to settle down and till the soil began to manifest itself among the invaders, after they had made a great part of England desolate, and Halfdene began parcelling out lands among his followers. The reign of Alfred, 871 to 900, has been a favorite basis for romantic tales of which he was the hero. From the Saxon forces in a condition of utter dispersion he organized armies and extended his power over southern England, defeating the Danes in many battles. The devastating wars had resulted in the extinguishment of all learning. Alfred has the credit of establishing schools and aiding the clergy. As a military organizer he exhibited energy and capacity and not only prepared for the defense of his country by land forces but built ships and met the Northmen at sea, where he gained some victories. His schools were necessarily dependent on monks and priests, whom he invited from other parts of the island and the continent to instruct the nobility. He also caused the Winchester Chronicle to be written. His fame is doubtless largely due to the scholars whose services he employed. He published a code of laws, compiled from the previous codes of Æthelbert, Ine and Offa, with extracts from the book of Exodus, thus making a single system of laws for his kingdom, which, however, contained no original legislation. By this time kingly power had made considerable advance. The king in person exercised the supreme judicial power and heard appeals from the inferior courts, which had become sore oppressors of the lower classes through the forms of judicial proceedings. He is credited with having been inclined to curb the nobility and award some measure of justice to the common people. The *ealdormen* and reeves had ceased to be elective officers and held by appointment of the king. They exercised their judicial functions mainly to establish rules increasing their own privileges and those of the wealthier order. Taxation had made some progress and Al-

fred had his civil list of expenditures for his household, for public works, and gifts to foreigners. He was a zealous churchman, imported monks to found a monastery and appointed his own daughter abbess of a nunnery. He reconstructed in some measure the system by which the country had been divided into townships, hundreds and shires. Over each ten householders was a tithing man and every man was required to register in some tithing. The whole tithing was made accountable for the conduct of each member. No one could change his habitation without a certificate from the head of the tithing to which he belonged. This was rendered necessary by the great numbers of robbers and vagrants, caused by the breaking up of bands of Danes and Norsemen and the disorganization of Saxon society resulting from the wars. The hundreds were held accountable for crimes committed within them, and courts were required to be regularly held in tithings, hundreds and counties for the administration of justice. In nothing is the growth of royal power better shown than in his dealings with public lands. From his reign dates the exercise by the king of sole power to grant *boc*-lands by charters in his own name without consultation with his *Witan*. Alfred had visited Rome in his youth and was a devout adherent of the pope, with whom he kept in correspondence.

Though Alfred made much headway against the Danes, he did not drive them from the island, but they retained their holdings in the north until the reign of Athelstan, an illegitimate son of Alfred's son Edward, when the Saxon's sovereignty was acknowledged by the Danish kings. Edward made a law requiring all sales of goods to be made in walled towns in presence of the Port-reeve. The *gerifa* or sheriff was made the primary judge in criminal causes and required to hold a court of the hundred once every four weeks. In the period from Alfred to Athelstan the system of trial before the free-men of the hundred is said to have been modified to a trial before a jury of twelve, though it is impossible to fix definitely the date at which this system was first established. That it has its foundation in the ancient custom of administering justice by judgment of the assembled freemen there seems no

doubt, but the power of the king and his subordinate officers grew and that of the freemen waned correspondingly. Athelstan is given credit for a law giving each merchant, who had made three long voyages, the rank of thane. He is said to have imposed an annual tribute on the Welsh of twenty pounds of gold, two hundred pounds of silver and twenty-five thousand head of cattle, apparently a heavy burden for those times. He enjoys the distinction also of having contracted marriages for his sisters with distinguished foreign princes, one with the father of Hugh Capet, another to Otto, afterward Emperor of Germany, a third to Louis, king of Provence, and a fourth to Charles the Simple. A king of England had thus attained a standing among crowned heads and a desire for alliances with them for members of his family.

With this growth of kingly power came also increased severity of rule and heavy punishments for petty offenses. Theft of property worth over eight pence by a person over twelve years old was made punishable with death. The growth of the feudal system was promoted by requiring that "lordless men, of whom no man can beget his rights" be required to find them a responsible lord in the *folk mote*. Trial by ordeal as a possible escape from punishment for crime had come into use. The ordeal by hot iron was conducted with religious ceremonies, one method involved the carrying by the accused of a hot iron in his hand, previously sprinkled with holy water, a distance of nine feet, where he might drop it. The hand was then bound up, and his guilt or innocence was declared after three days by the appearance of it. The ordeal by hot water required him to put his hand in boiling water and take up a stone immersed in it to the depth of the wrist or even the elbow. In the ordeal by cold water he was immersed in a pool, if he sank he was innocent, and if he floated he was guilty. The trial by ordeal was supposed to be a method of obtaining a divine judgment and the acquittal of an innocent man by special miracle wrought in his favor. Its use shows the barbarity and gross superstition of the age. In keeping with this were laws regulating the payment of church dues, some of which were newly devised. Not only were there tithes, but

kirk shot, plough alms, and soul-shot, the last named a burial fee. Yet there began to be thoughts of charity, and Athelstan directed that one poor Englishman be fed from each two of his farms.

In the reign of his successor, Edmund, a universal oath of fealty to the king was required, showing the growth of feudal ideas. There were no marked changes in the system or the general conditions of the kingdom till 980, when fresh Danish invasions from over the sea began in the old manner with pillaging and slaughter. These were followed by others, until in 991 King Ethelred paid tribute to the invaders, without thereby obtaining protection from further marauding. The growth of kingly power and of privileges of the nobility had not resulted in much but corresponding oppression for the multitude. The people did not even gain the advantage of protection from foreign enemies through an efficient military organization. The Danes and Norwegians continued to come and to gain victories till in 1016 Cnut, the Dane, established his power over all England. He fortified his position by making the clergy his friends and increasing the already grossly oppressive power of the great landholders over their dependents. He was politic as well as warlike and summoned a great *Witenagemot* to settle his right to the throne. They promptly acknowledged him as their lawful sovereign. He had the good sense to accept the system of laws substantially as he found it, and to adapt his policy to the prejudices of the people. He was remorseless in removing obstructions to his power and did not hesitate to kill those whose influence he feared. He enforced the demands of the clergy for tithes and dues in order to secure their hearty aid in maintaining his authority. He strengthened the power of the nobility by enlarging their judicial functions over their dependents. There was a distinct increase in the severity of punishments. The infidelity of a wife was punished by loss of her nose and ears, perjury by death, confirmed offenders were mutilated by cutting off feet, hands, putting out their eyes, or other horribly cruel mutilation.

The growth of the power of the clergy is indicated by the grant to the bishops of final jurisdiction in cases of murder.

That the king, who claimed all forfeiture of *boc-lands*, had become a great land owner is shown by the fact that he required his reeves to keep him supplied from the produce of his own lands, without levying involuntary contributions. Cnut ordained that the lord should not take more than his proper heriot on the death of his vassal, and that the rest should be distributed under the lord's direction to widow and children or other relatives. The lords, being the judges, seem to have been inclined to extend the amount of the heriot, but Cnut limited it to a fixed scale according to the rank of the deceased. This scale, however, only fixed the charge on the estates of the nobility, leaving petty tenants still at the mercy of their lords. Cnut's power did not depend on the voluntary support of the nobility or clergy or both. He kept at his back a strong body of armed men, his house carles, under pay, estimated all the way from 1,400 to 6,000 men. To support these he imposed *Danegeld*, a direct land tax.

Though Cnut had ruled England, Denmark and Norway, on his death his empire fell in pieces. His son Harold took England's throne from 1035 to 1040, followed by Harthacnut, another son, from 1040 to 1042, with whom the Danish dynasty ended.

The reign of Edward the Confessor, 1042 to 1066, followed by Harold January to October 1066 concluded the period of Saxon dominion. Though the system of laws had undergone nothing termed a radical change of the constitution, and though there were still the same classes of society as in the early days, the social structure through changes in proportions had become altogether different from that of the fifth century. There were still freemen, owning their lands without being subject to the payment of rent or tribute to an overlord, but they were few in number and even these were subjected under the Danes to a tax of *Danegeld* on their lands, which no early Saxon paid to any ruler. The scheme of legal title to the face of the earth was made to work out the result of giving to the king and the nobility dominion over the multitude. The law of inheritance, so subtle and far reaching in its effects, steadily fortified the power of the

nobility. The ownership of a large tract of land, assigned to him by the *Heretog* or king as his part of the spoils of a newly conquered district or an estate seized by the king from some subject, was passed down by inheritance from generation to generation, giving to the heir the same wealth, social position and political influence as that which his ancestor had held. The weak freeholders were led to seek the protection of powerful neighbors and in return for that protection did homage, pledged feudal service and thus fell, not within the protection, but under the power of the lord. Ambition to rule, gain wealth and greater power was the dominant passion of the leaders, and wars for the aggrandizement of lords temporal, and often of lords spiritual, became common. Murder, robbery, wholesale burning and desolation of districts in the name of the so-called right of some earl, duke, bishop or king were common occurrences, and to this day the questions as to the technical legal foundations of the claims of the respective leaders are gravely discussed, as if matters involving some principle of justice. It was in fact merely a question as to which man should be permitted to take of the earnings of the people inhabiting a district all above a bare subsistence, and stand in a relation to them which should give the power to enforce the performance of military services. Though there were assemblies of the people under much the same names as in early times, the meaning of terms had been greatly changed. The *witan* or *witenagemot* of the kingdom had wholly lost its ancient popular character. It meant merely a gathering of earls, bishops, abbots and such of the king's *thegns* as he saw fit to summon. These lords came to the great assembly, often followed by a large number of retainers, but it was the lords only who had any voice in the *witan*. Though there were still meetings of the towns, hundreds and shires, it was only petty concerns that they were allowed to decide. In the *folkmote* of the county not all the freemen assembled, but the small towns sent four men and their reeve, and the large twelve. Twelve *thegns* were appointed as a committee to transact the business. The earl, the bishop and the sheriff, all deriving their appointments from the king, were

present and really directed the proceedings. Through the county courts the demands of the clergy, and of the landlords, were enforced in accordance with the rules they had succeeded in having established, which were called laws. Criminal causes were tried and offenders punished. From the decisions of this court an appeal lay to the king. The sheriff appointed by the king convened the court of the hundred and presided over it. While the whole body of freemen were still the judges, twelve selected men actually decided the causes. The direct taxes, the *Danegeld* and ship *geld*, were assessed against the hundred as a unit, and a part of the business of the court of the hundred was to apportion it among the townships. In the township meetings the nearest approximation to popular rulership was still retained. Matters relating to the repair of roads, the rules for the cultivation of lands and the enjoyment of what still remained of common property, were disposed of at these meetings. In these the lord of the manor soon dominated, and his steward presided at the meetings, which were converted into the Courts Baron, Customary Courts and Courts Leet of later times, as the feudal system grew in strength. Cities and towns had begun to grow, but there was little trading or manufacturing, and the organization of town and country was practically the same, the largest cities ranking as counties, the medium ones as hundreds and the villages of sufficient importance as townships. Of a total in round numbers of 283,000 adults, it has been estimated that there were 1,400 full owners of land, 7,800 mesne lords, holding under a superior, 1,100 clergy, 8,000 townsmen, 15,000 freemen, 2,600 merchants, craftsmen, bailiffs, etc., 25,600 (male and female) slaves, and the balance about 222,000 were so bound, either to the soil or to the service of a lord, as to be practically under his power and at his mercy.¹

Of course strictly accurate figures are not to be had, but the fact is beyond question, that the great mass of the population had become subject to the power, under more or less limitation in practice, of the great landholders, who through their title to the soil enforced by their house *carles* or personal followers,

¹ Ramsey's Foundations of England 512.

seized also substantially all political power. Thus the foundations of feudalism in England were well advanced before the advent of the Normans, and lawyers had already begun to thrive on litigation over land tenure, but questions of title affecting large districts were usually decided by the sword and battle-axe, rather than by any tribunal.

The church had brought in some little knowledge of letters, and our histories of the times come from native writers of that age. But neither the learning of the church nor the moral teachings of Christ had extended very far or made a very deep impression. No moral obstacle was recognized as standing in the way of the strong leader, who could take what he wished by force. To kill an enemy was still laudable and glorious, rather than otherwise, and in doing this to kill a multitude of his underlings but added to the murderer's renown. To ravage, burn and destroy, and thereby expose women and children to the elements and to starvation, were regarded as necessary attendants of the enforcement of the demands of a lord, and even to butcher them aroused no general condemnation from other lords. Some progress had been made in the organization of society, and the church had brought in an advanced code of morals, but neither the kings, lords nor clergy had much thought about justice among men, or the actual application of Christian morals to human affairs. The power of kings and lords was established for their benefit and regarded as their property. The high clerical positions were similarly esteemed. The rank of a lord was measured by the extent of his land, and of a priest by his income. Neither was rated according to the services he rendered to others or the value of his moral teachings. The clergy, in return for the tithes and other payments they received, gave title only to possessions for the disembodied spirit. They took the temporal benefit and promised in return the spiritual in the life to come. The rule of the kings and lords was established by force and bolstered up by fraud, that of the clergy by fraud aided by force.

William the Conqueror came from his duchy of Normandy with a claim of right to the crown of England. He took

good care to fortify this claim with a strong and well equipped army for those times, and with the moral (?) support of the Pope. The battle of Hastings, in which Harold was killed, left England without a recognized head or an organized force to defend it. William possessed the essential qualities of a ruler of men; he was an efficient organizer. He was also politic in the methods he pursued to attach leading men to his interests. He went to England burdened with no philanthropic motives and hampered by no conscientious scruples. He took the land to parcel it out among his followers or retain it as his own. A few of the old Saxon lords, who rendered homage, were allowed to retain their holdings, but most of the great estates were transferred to his Norman followers. The great church appointments, with a little more respect for form and a little more ceremony, were then taken from their English incumbents and also conferred on Normans. This was rendered easy by his alliance with the Pope, who sanctioned the changes. Toward those who quietly submitted he was somewhat gracious, but resistance of his authority was most mercilessly crushed. Nothing could exceed the heartless barbarity with which he desolated York, Cheshire, Shropshire, Derbyshire and Staffordshire, for rebellion against his authority. Men, women and children were ruthlessly slaughtered, all buildings burned and the country made a desolate wilderness, swept clean of all means of subsistence to insure the destruction of its presumptuous people, whose lords had refused to bear him allegiance. In William's eyes only the rich and powerful were entitled to any consideration. Nobles who though guilty of rebellion afterward submitted and did homage, were pardoned, but their poor followers were slaughtered. William proceeded at once to fortify his power by the construction of strong castles at all important points, in which he stationed his most trusty followers. The feudal system, which had already made much progress under the Saxons, was now given its more advanced form, as it existed in France. The king assumed the title of lord paramount, to whom all must do homage and swear fealty for their lands. The whole claim of authority was based on a theory of ownership of

land. The great vassals held title to their estates under the king and parcelled them among their chief retainers. The men who actually tilled the soil became menials, whose rights were regarded as of very slight concern. In the fourth year of his reign he published a code of laws, which in main were the same as those of his Saxon predecessors. He however, took care to protect his Norman followers by requiring that the hundred, in which a Frenchman was killed, must produce his murderer within a week or pay a penalty of forty-six marks. In 1085, when threatened with an invasion by the Danes, William brought over mercenary troops from the continent, levied a land tax and laid waste the coast where the enemy would be likely to land, so as to deprive them of subsistence when they came. William was superior to his Saxon predecessors in that he took a more general view of his kingdom's situation, but in its defense the preservation of his own power and position was the main object. He did not hesitate to sacrifice the people in advance of the time of need. His capacity for gathering information by systematic methods was most strikingly exhibited by the great survey of the kingdom, compiled in Domesday book. This was no less than a great census and assessment roll of the country. Commissioners were sent into each shire, who made a list of all the lands, with the names of the owners in the time of Edward and at that time, the character of the tenure by which they held, whether by *hoc* or otherwise, the conditions to which they were subject, and the value in the time of Edward and at the time of the survey. In order to ascertain these facts they were directed to go into each hundred and take the evidence of sheriffs, landowners, priests, bailiffs, and six selected villeins from each township. They were required to ascertain the extent of each holding, measured in the old way by hides, and also by the standard of a fair year's work by an eight ox plow team, rated at about one hundred and twenty acres, with details as to the population, whether free or slave, the character of the soil, extent of meadows, woods, pastures, etc., the buildings, mills and other improvements, with the numbers of cattle, pigs, horses, etc. The largest cities and some of the

northern counties were not included. This was a remarkable example for that age of that fondness for figures and definite information, which has since been so characteristic of the British nation. It was William's method of taking an invoice of the property he had acquired by the conquest. His next important step was to impress the fact of his ownership on the people by requiring all landowners, holding any considerable tracts, to assemble on the plains of Salisbury, pay him homage and swear allegiance. In this he overlapped the continental system of infeudation and required homage and fealty from those holding mediately from his vassals, as well as directly from himself. Thus the feudatories of the lords were required to do homage and swear fealty to the king, though also bound to their immediate superiors. This was contrary to the prevailing system both in England and on the continent, by which the tenant was bound to the king only through his immediate lord, whom he could not desert even at the command of the king. By parcelling out the lands of the kingdom among his bloody and remorseless followers in great tracts, William completed the establishment of that landed aristocracy, which was the source of so much pride, arrogance, selfishness, bloodshed and cruelty through succeeding centuries. The theory was simple and easily taught to the ignorant multitude. The king or his vassal high or low owned the soil, and whoever else dwelt on it must do so on such terms as the owner imposed. The personal freedom of the poor landless man was not denied, but in order to have an abiding place he must have a lord and serve him. William loved to hunt, and in order to provide a hunting ground and make what was termed the New Forest, he drove the people off some 17,000 acres of tillable land and converted it into a wilderness to breed game, which he protected from others by savage laws. "Whoso slew hart or hind had to be blinded." This was but another exhibition of his extreme selfishness and utter disregard for the rights of the humble people.

The leading incidents of the feudal system were, on the part of the lord an obligation, kept or not according to circumstances, to protect the tenant in his possessions; on the

part of the vassal to render military service and furnish one mounted and equipped soldier for a given quantity of land, bound to forty days' service in each year; to aid his lord by a payment of money when his eldest son became a knight, or his eldest daughter was married, or to pay his ransom in case of his captivity; to give a relief on the transmission of an estate from ancestor to heir, which at first was a sum fixed at his pleasure by the lord on taking possession by the heir, but later was fixed at one year's profits. The lord was the guardian of the lands of the heirs of his vassals during their minority; as such he took the products of them, and rendered no account of what he received. When a tenant in chivalry, deemed the most honorable tenure, came of age, to get possession of the lands of his ancestor he must sue out livery of seizin and pay a further half year's profits. Wardship also gave the lord power to dispose in marriage of the ward, male or female, on pain of heavy forfeiture for refusal. Forfeiture of estate for treason or felony and escheats on failure of heirs in the designated line, afforded pretexts,—often taken advantage of,—for the lord to dispossess a tenant and take the lands to himself. One of the innovations introduced by William was the division of the ecclesiastical from the civil courts, and another was the decision of causes by wager of battle. In the exercise of their jurisdiction the bishops assumed the right to determine all causes affecting their own interests and to decide them in accordance with the Canon Law. Thus, in building up their power, the clergy were allowed to enforce their will through the forms of judicial proceedings. The High Court of Justiciary, the original court of Kings Bench, was established by William, and he also established a chancery and treasury, the Chancellor keeping the king's seal, conducting his correspondence and acting as his general secretary. Though William courted and obtained the sanction of the church for his deeds, he did not concede papal supremacy in England, but retained authority over ecclesiastical affairs in his dominions and laid down as rules, that no Pope should be recognized without his leave, no papal letters should be delivered till shown to him, nothing should be done in Synod or

Council except by his permission, and no tenant in chief should be excommunicated or censured, except by his orders. The rapid progress made in castle building is shown by the fact that forty-nine castles are named in Domesday. A conspicuous one was the Tower of London. Many cathedrals were also erected. William gave to England a system, destined to endure in most of its chief points for many centuries. He died in 1087 and was succeeded in Normandy by his eldest son Duke Robert and on the throne of England by his second son William Rufus, who ruled till 1100, when he died from an arrow shot received while hunting in the New Forest made by his father. In his time there were many uprisings, against his authority and private wars among his great vassals. Duke Robert joined the first crusade and mortgaged his duchy to William for money to defray his expenses, thus for the time uniting England and Normandy under one head. He was succeeded by his younger brother Henry, who followed his coronation by publishing a charter, in which he recited that he had been crowned by the common council of the Barons of the Realm. This was a marked departure in name from that of an assembly of the freemen, though not essentially different in composition from the *witan* of the later Saxons. He promised to abstain from unjust exactions and liberated the church, agreeing to neither sell nor farm out vacant benefices nor to seize vacant sees, and to refrain from divers other obnoxious practices. Though this charter made no effectual provision for its enforcement against the king, it is a notable step in the direction of government in accordance with fixed principle. A special copy of it, addressed to the sheriff, was sent down to each county. The basic system, which denied the multitude all right to the face of the earth, had been gotten well under way by the Saxons and was fully established by the two Williams. It was not devised to do justice among men, but was expressly designed to enable the organized few to rule the many and extort from them the fruits of their toil without return. The charter of Henry makes no attack on the principle, but promises slight relief from some of the abuses which excited discontent among the barons and clergy.

Henry was more politic and less bloody than his father or brother, and under him there was some progress in the organization of the state, especially in the development of the judicial and financial systems. From his time the king's justices began to go down and sit in the county courts with the sheriffs, and the King's Court (*Curia Regis*), took jurisdiction of causes relating to lands between tenants holding directly under the king. From his reign dates the use of the term exchequer to designate the royal treasury, and accounts were regularly kept, though in a most primitive way, with the sheriffs, whose duty it was to collect and semiannually return the taxes from the counties.

The lack of moral foundation to support the feudal system was well exhibited by the period of anarchy during which King Stephen fought to maintain his authority. He was not heir to the throne according to any accepted doctrine of inheritance, nor was he elected by any representative body. The Londoners, a few nobles and an archbishop, with some other churchmen, gave him their support, and he was crowned with the usual rites. Matilda, the daughter of Henry, claimed the crown, and the nobles supported either party, according to their interests or inclinations. Feudal oaths were easily broken. Pride, greed and mere love of strife caused the barons to war with each other, with the king or any other opposing force that was at hand. Among the barons no calling was deemed honorable but war. All useful labor and all forms of true service for others were deemed contemptible, and the business of killing human beings in fight, destroying property and spreading desolation, was alone considered honorable. The rapid construction of strong walled castles, from which the lord and his murderous band sallied and into which they retired, tended greatly to promote the personal warfare of the age. The poor tillers of the soil, who dwelt without castle walls, were all the time exposed to destruction at the hands of the enemies of their lord, and were little better off when left merely to his mercy. The disorders of the times tended to the growth of the influence of the church, and Stephen by appealing to the Pope weakened the authority of

the Crown. The clergy came to deny all jurisdiction over themselves and their land by the civil power and to insist on their right to finally determine all matters affecting their interests. Though many bishops and other high church dignitaries maintained their power by armed forces and fought at the head of their retainers like the temporal barons, they were generally more inclined to use the peaceful weapons of judicial and papal decrees, enforced through the superstitious fears of the people. There was less danger and more certainty of results when priests passed on the merits of the claims of priests.

Stephen was followed by Henry II, whose right to the throne was universally recognized. He was a prince of far greater capacity and more inclined to gain his ends by pacific means. So great had been the encroachment of the ecclesiastical on the temporal power, that the greatest task and most prominent purpose of Henry's reign was to recover the power and influence which the clergy had engrossed. He fully appreciated the necessity of organization and of the support of the leading spirits of his kingdom in his contest with the church. He therefore called a great council of the nobility and prelates at Clarendon to settle the boundaries between the authority of the king and that of the church. This appears to have been the first great parliament under the Normans. The barons naturally sided with the king, and with their help he overawed the bishops and enacted the Constitution of Clarendon, which declared that all suits concerning advowsons and presentations of churches should be determined in the civil courts; that churches belonging to the king's fee should not be granted in perpetuity without his consent; that clerks accused of crime should be tried in the civil courts; that the laity should not be accused in spiritual courts except by reputable witnesses; that all appeals in spiritual causes should be from the archdeacon to the bishop, from the bishop to the primate and from him to the king, and should go no farther without the king's consent; that archbishops, bishops and other dignitaries should be regarded as barons of the realm and entitled to the privileges and subject to the burdens incident to

that rank; that the clergy should no longer pretend to the right of enforcing payment of debts contracted by oaths or promise, but such suits should be left to the civil courts; and that the sons of villeins should not be ordained as clerks without the consent of their lord. These and other provisions tended greatly to curb the overgrown pretensions of the church in matters of purely temporal concern, but the provision last noted clearly shows, that it was not for the purpose of securing greater freedom for the lower ranks of society, but to strengthen the positions of the king and barons. These articles, reduced to writing and sealed by barons and bishops, are a most notable instance of an early attempt to set bounds to the ruling power. Though leveled against the pretensions of the clergy, it was an instance of opposing the kingly force to the clerical. The Constitution of Clarendon dealt with the opposing forces of temporal and spiritual power. By the adoption of this constitution Henry did not by any means settle the controversy, but his whole reign was a continued struggle against the Papal power, of which Thomas à Becket, Archbishop of Canterbury, stood as a most renowned champion. To enforce his power Henry issued orders to all his judicial officers prohibiting all appeals to the archbishop or pope, or the receipt of any mandate from them; declaring it treason to bring from either of them an interdict into the kingdom, under penalty, if a secular clergyman, of loss of eyes and castration, if a regular of amputation of the feet, and if a layman, of death. Henry found the struggle a difficult one, and on several occasions was forced to humble himself and make terms with his adversary, yet he persisted in his adherence to the principles of this constitution. In his reign there was a marked advance in the exercise of judicial power in lieu of private warfare. He divided the kingdom into four judicial divisions with justices in each, who held courts in each of the counties. A strange phase of the criminal law of the time was, that a clergyman, guilty even of murder, could be punished by degradation only, if he were murdered the slayer would be subject only to censure and excommunication, and

the crime might be atoned for by penances and submission. The murderers of so distinguished a prelate as Becket, on submission to the penances imposed by the Pope, were not only left with their lives but also with their titles and estates. Henry and his council promulgated a law, that the goods of a vassal should not be seized for the debt of his lord unless the vassal was surety for the debt, and that the rents due from the vassal should be paid to the creditors of the lord instead of to the lord himself. The enactment of such a law indicates the prevalence of the condemned practice and a growing sense of the rights of vassals.

Henry invaded Ireland and overran it with little opposition, but the dominion he established was not enduring. He also compelled the Scotch to do him homage. His rule was thus extended over all the British Islands, as well as over Normandy, but it was merely the rule of a feudal monarch, dependent on individual capacity for its maintenance and doomed to fall whenever passed into weak hands.

The reign of Richard, 1189 to 1199, exhibits in the strongest light the barbarity, the gross superstition and bigotry, of the times. The crusade to free the Holy Land from the dominion of the Infidels was a war waged by the fanatical Christians of the west against the far more enlightened, cultured and humane Mohammedans of the East. Richard taxed his kingdom to the utmost and sold great estates in the most reckless manner to raise money to defray the expenses of his army to invade Palestine. It was the first distant expedition undertaken by a British army and was productive of some good in an educational way, though based on no moral purpose. A superstitious veneration for a particular spot of earth and a hatred for the followers of a different priesthood furnished the pretext for it. Nothing could have been more romantic or foolhardy than Richard's career in the East, nor much more disastrous to his followers, most of whom perished either on the march, in camp or on the battlefield. Richard's detention in captivity by the German Emperor and Duke of Austria, Christian princes, is but one of many exhibitions of the prevailing lack of real Christian fellowship

among the crusaders; but his own act in causing the slaughter of five thousand prisoners, taken at Acre, is a far more striking proof of the utter barbarity of the professed Christians. While Richard was leading his vassals to destruction in the East, his kingdom was exposed to all the disorders incident to the feudal system when free from the restraint of a master like Henry II. Normandy and England both suffered from the jealousies, hatreds and ambitions of the barons, and the inefficiency of the clerical regents, whom he left as guardians of the realm. Prince John after putting an end to their rule did no better. Richard lost his life by refusing to accept the surrender of the garrison of the castle of Chalus near Limoges, preferring to take it and hang its defenders for presuming to resist him. He was struck in the shoulder by an arrow, causing a wound from which gangrene ensued and occasioned his death. The peculiarities of his temper are well illustrated by his treatment of the garrison, all of whom were hanged except the archer who shot him, whom he pardoned; but this did the archer no good for his followers flayed and hanged him.

Though Arthur, Duke of Brittany and son of Geoffrey the eldest brother of Richard, was in the regular line to inherit the throne, John, the younger brother, was named his successor by Richard in his will, and to make sure of his authority murdered the young Arthur. Such exhibitions of selfishness, heartless criminality, and utter disregard of the ties of blood, have alas been all too common in princely families. The struggle between the Pope and the King for temporal power went on during John's reign as in that of his father, but with far different results. John was neither politic nor capable of gaining his ends by force. He was cruel, deceitful, fickle, a tyrant by nature, without ability to attach any class of people to his interests, except through payments or favors. He therefore had to struggle against his barons, and against the church. At last he allied himself with the Pope and even yielded so far to papal pretensions as to agree to hold England as the feudatory of the church of Rome and to pay a tribute annually of 1,000 marks. His abject submission to

Rome, in such marked contrast with the stand taken by Henry, was utterly distasteful to the barons, with whom he was perpetually in conflict; nor was his conduct toward the clergy such as to hold their good will, but by his oppression of all classes of men and his gross immorality and cruelty he aroused the hostility of the spiritual as well as the temporal lords. The archbishop of Canterbury took the lead in organizing the bishops and barons to curb him. At a meeting convened in London they demanded of him a renewal of the charter of Henry and the laws of Edward. He temporized and took time for reply, during which he called in the aid of the Pope, but in spite of all his efforts the coalition grew in strength, and an assembly of 2,000 knights with their followers forced him at Runnemedes to sign the Great Charter, so much regarded through later times. With characteristic perfidy on his part and assumption on the part of the Pope, he procured a Bull annulling the charter and prohibiting the barons from exacting the observance of it. John thereupon repudiated it and, having gathered a force of foreign mercenaries, he waged war on the disbanded and disorganized barons, laid waste their estates and butchered their poor vassals. In the ninth year of his reign John granted the city of London an important charter, giving it the right of electing annually a mayor and common councilmen and to elect and remove its sheriff at pleasure. Thus the disquiet reign of a vicious ruler contributed materially to the foundation of a better ordered society in later times, though the fruit was exceedingly slow in ripening.

The far-reaching value of the Great Charter does not lie in any purpose to relieve the lower orders from the tyranny of the barons and priests, nor of the king himself; but in the fact that a written chart was made, which set bounds to the authority of the king and his officers, and also to that of the barons, and marked out a method of enforcement against the king. The feudal system with its unjust basis and its vicious tendencies was left undisturbed, but abuses beyond certain expressed limits were prohibited. A full copy of this charter is given in the Appendix.

The importance of this great charter lies not so much in the intrinsic merits of its provisions, as in the pertinacity with which succeeding generations have insisted on the observance of such as tended to the protection of the subjects against the unwarranted demands and acts of the king and nobles. The Charter accepted an organization of society which denied justice and invited private wars and turmoil. A favored few were in possession of most of the lands of the kingdom. They and their ancestors for generations had been accustomed to extort from their tenants a large share of the products of the soil, for which nothing was given in return. This system had continued so long that it was accepted without question in its main essentials. The transmission of the privileges and powers of the great landlords from father to son by inheritance was accepted as an established law, and the great multitude held in servitude to the barons accepted their lot as that to which they were born, with no suspicion that the general system of land tenures was responsible for the grossest injustice to them. The lord was born to pride, arrogance, disdain of all useful employments, love of war, and in peace of the savage sport of the hunter, drunkenness and debauchery. The poor villein was born to a narrow life of ignorance and servitude, from which only one of remarkable spirit and capacity could raise himself. The Great Charter, in framing which the hands of the clergy evidently performed a great part, accepts all those forms of injustice, which were fortified by long established, settled rules, with which people were familiar and in which they acquiesced, and made provisions against the exercise of exceptional and arbitrary powers at the caprice of the king or of the barons. It did not seek to better the condition of slaves or villeins in any marked degree. It is notable that thus early a provision should be made in favor of the freedom of trade, a policy which in modern times has contributed so bountifully to the prosperity of the people. The mere circumstance of granting a charter in that age was not at all remarkable: Prior kings of England had granted them, as did also John's successors. But such charters were not peculiar to England. The German emperors granted them

in great numbers to their dependents and often violated them without compunction. This charter accorded with the spirit of the times in main, yet breathes a spirit of justice in advance of them. Subsequent generations caught the spirit and fought for an enlarged application of it. The great importance of the Charter lies in the fact that it became the point around which the forces contending for human rights rallied, and the seed from which popular rights in England have been propagated.

Henry III under the guardianship of the able Earl of Pembroke granted a new charter in 1216 containing forty-two sections, mostly copied from that of John. In 1217 he followed it with another in forty-seven sections which he renewed in substance in 1224. The main difference between the charters of Henry and that of John is in the omission of the provision requiring aids and scutages to be granted by the barons. The provisions of the later charters are not of so much importance, for the reason that in after times the Great Charter of John was appealed to as the authoritative expression of the limitations of the king's power. At the time of granting his second charter Henry also granted another, called the Forest Charter, regulating the government of the forests and providing for the restoration to their owners of lands unjustly seized by his father, uncle Richard and grandfather, to make forests. This charter, though deemed of much importance at the time, dealt mainly with conditions peculiar to the time and has left little if any impression on modern institutions. Henry began his reign by swearing fealty to the Pope as his father had done, and much of the trouble of his reign was due to the gross venality of the Pope and clergy. The thirst for power, which had been so strong, had changed into a desire for wealth and luxury, and the demands for more money grew and could never be fully satisfied. This reign is especially notable for its parliament. At first, as in preceding reigns, only such of the barons and prelates as the King saw fit to summon were consulted, but in Henry's time these sessions were more frequent and more numerous attended. In 1258 Henry summoned a Parliament for the purpose of rais-

ing funds for his project of conquering Sicily for his second son Edmond. The barons came in arms, backed by their vassals, and proceeded to name twenty-four barons with authority to reform the state. The king was forced to submit to their authority. At the head of the council thus formed was the Earl of Leicester, an able man. This council at once took charge of the administration of the government. They removed the chief justice, chancellor and treasurer, and appointed others of their own selection. To further extend their power they caused the barons to appoint, as a committee of the Parliament, twelve persons, to possess the authority of the whole Parliament when not in session. In this manner the power of the king was reduced to a mere shadow, and the great barons assumed substantially the whole political power of the state. But the spirit of the times and the lack of any moral bond holding the barons together or checking their excesses soon enabled the King to recover his ground. The Pope, in accordance with the established policy at Rome, absolved Henry from the oath he had been forced to take to support the new constitution, and the King thereupon issued a proclamation resuming authority and followed it with appointments of new officials in all positions of importance. He summoned a parliament which ratified his acts, but the struggle did not end here. Leicester and his party rose again in opposition and, to avoid bloodshed, the singular expedient was adopted of submitting the matters in dispute between the king and these barons to the arbitration of Louis, King of France, distinguished for his virtue as well as piety. King Louis quite naturally decided in favor of King Henry and, with the same want of faith that the King had exhibited, the barons refused to abide by the award. Civil war ensued, in which the barons were successful and the King fell into their power. Leicester was again at the head of the government. In 1265 he convened a new parliament, to which he summoned, not only such of the barons and ecclesiastics as were of his party and two knights from each shire, but also deputies from the boroughs. This was the birth of the House of Commons, being the first recorded instance of any representation from the bor-

oughs. The number of the barons in the forty-seventh year of Henry's reign is given roundly at one hundred and fifty temporal and fifty spiritual. The long reign of Henry, from 1216 to 1272, was a period of great turbulence, exhibiting in marked degree the evils of feudalism. Yet this period of turbulence marks the origin of that system which has ruled England through so many succeeding centuries, and under which its power and prosperity have expanded so greatly. This reign is notable as being that from which the preserved statutory law, now so voluminous, starts. The statute of Merton, ordained in 1235 by the king with the approbation of the lords spiritual and temporal, treats of remedies for widows deprived of their dower, of disseisins, tenures of woods, wastes and pastures, usury, wardships and marriages, limitations of writs, and allows attorneys to appear in suits. In 1266 a statute was made regulating the price of bread and ale according to the price of corn. Several statutes were also enacted regulating process and procedure in the courts, one of which, relating to leap year, is in form an order addressed by the King to "his Justices of the Bench." The statute of Marlbridge 1267 relates mostly to subjects connected with feudal tenure and to writs for relief in the courts, the names of many of which are familiar to lawyers versed in the common law. The summary method of collecting the landlord's rent by distress without legal process is treated of. Dower, *darrein presentment*, *quare impedit*, *mort d'ancestor*, *replevin*, waste, voucher to warranty, entry sur disseisin in the post, and other kindred writs and rights are regulated; showing that even in those turbulent times people looked to courts and law for escape from robbery and violence. These statutes were all in Latin, while some of those of the succeeding reign of Edward I were in Norman French and others in Latin.

At the time of the death of Henry Prince Edward was crusading in the Holy Land. On his return he dallied nearly a year in France. Being challenged to a tournament at Châlons in which he was successful, he was forced to follow the mock battle with a real one, in which many knights were slain. At Paris, Edward did homage to the French King for

the lands he held in France and then returned to England to be crowned. To repress the robberies and murders which were so common throughout the country, he appointed a commission empowered to deal summarily with such offenders, who zealously condemned suspects and confiscated their estates, thereby greatly adding to the King's revenues. Some persons were guilty of debasing the coin of the realm and, as Jews were smart and hated by the multitude, he caused two hundred and eighty of them to be hanged in London at one time and many others elsewhere in the kingdom. This also added to the king's revenues, and probably was merely a false pretext devised as a justification of the murder and robbery of the more peaceful and thrifty Jews. This cruel act he followed with the confiscation of the estates of all Jews, except enough to pay their transportation out of the kingdom, and banishment of all of them to the number of 15,000. Edward was thrifty. He obtained from his parliament a grant of one-fifteenth of all chattels, from the Pope one-tenth of all ecclesiastical revenues for three years, and from the merchants half a mark on each sack of wool exported and a mark on each three hundred skins. He made close inquiry into the titles of the nobility to their estates and caused the seizure of all for which he could find a pretext. The purpose of the law was to support the power and pretensions of the king, the nobility and the clergy. The judges added a further purpose, to enrich themselves, and their corruption was most gross. Edward brought them to trial before parliament and fined them so heavily as to bring him a large sum of money. Thus he succeeded to their ill-gotten wealth. The decay of the feudal system of warfare and the resort to paid troops made it necessary for Edward in carrying on his wars with the Welsh, the Scotch and the French to call on his subjects for frequent contributions. To obtain these he found it necessary to call the parliament together to grant him funds. Though the Earl of Leicester had summoned representatives of the boroughs in the time of Henry III the practice had not been continued, but in the twenty-third year of Edward's reign he summoned representatives of all the boroughs, and this is

regarded as the real date of the first House of Commons. In summoning the knights and barons the practice grew of calling such as the king chose and of having the knights and barons of less wealth choose representatives from each county to attend, whose expenses were borne by the others. Though these representatives came from the more humble orders of the state, they there, as in so many other countries, at first gave their support to the king in order to curb the power and pretensions of the great barons. At first the commons did not assume legislative functions, but merely assented to such demands for money as the king made and they felt unable to resist. They might, however, petition for a redress of grievances, and the king might grant it if he thought best. In Edward's reign the barons many times had recourse to the Great Charter and required the king to swear to observe it. He often violated it and repeated many times his promise to be governed by it. All classes of subjects found some provisions in it tending to protect them and insisted on the observance of them. The power of the clergy began to decline, and the demands of the king for money steadily increased. The holdings and revenues of the church were so great, that it was no longer the policy of the Crown to exempt them from taxation, and Edward insisted on large contributions out of ecclesiastical revenues. The clergy at first resisted, but the King placed them outside the protection of the law by depriving them of any remedy in the courts for wrongs done them. As plenty of his subjects were ready to rob them, the clergy soon found it to their interest to yield. He also placed a check on future acquisitions of land by the clergy by a statute of mortmain. In his reign there was much legislation, and the courts grew in importance. He established the office of justice of the peace, abolished the office of chief justiciary and divided the court of the exchequer into four with coördinate jurisdiction. The perpetuation of the power of the nobility was facilitated by the statute allowing the entailment of estates, so that the owner could not alienate lands away from the heir. Edward tried to break away from the annual payment of 1,000 marks as tribute to the Pope, but was unable to

do so and preserve the support of the head of the church, which he often found needful. England's King therefore continued to be a vassal of the Pope, but the clergy felt his heavy hand and were no longer able to oppose his will. Commerce grew in volume, and in 1296 the society called "Merchant adventurers" was formed for the improvement of woollen manufactures and the sale of cloth abroad. A charter was also granted for the protection of foreign merchants, but on hard terms. In his wars Edward exhibited great vigor and succeeded in the permanent subjugation of Wales and the temporary conquest of Scotland. The reign of Edward I is chiefly notable for the great development of the system of courts and rules for the administration of the law. Nearly every topic affecting proceedings in court and feudal tenure of land received attention. Sheriffs were prohibited from holding prisoners without an indictment by a grand jury of twelve or more. The qualifications of jurors for the trial of causes were fixed by law, and the number to be summoned limited to twenty-four. Terms of court were regulated, forms of writs were authorized to be issued out of chancery, and all writs were required to be under the great seal. The statute of "*quia emptores*" provided that vendees of land should hold under the lord paramount as the vendor had held. The period of savage punishment of persons charged with crime had not yet arrived; aside from an act making rape punishable with death, there were no savage penal statutes. Most of the acts related to land tenure or to the recovery of it or of rents and profits, but there were also statutes for the collection of debts and of damages for wrongs suffered. Most of the laws are models of clearness and brevity, in strong contrast with the verbosity of later periods. Whatever his faults or misdeeds, Edward is well entitled to the name of the great lawgiver, for from his reign that system of administering the law, so long boasted of by Englishmen, took definite form. While courts, juries, writs, sheriffs, bailiffs, etc. existed and had been used long prior to his time, he more than any other king, gave form and completeness to the system, and, though there was little justice, there was much of statu-

tory law and of courts and officials of the law at the conclusion of his reign in 1307.

Edward II was a weak prince. The system of parliamentary rule grew in strength during his reign, and that peculiarly English characteristic of demanding established rules in government found expression in acts of parliament, many of which were forced on the king against his will. He was compelled to give up his favorite, Gavaston, a Gascon, who was murdered by jealous earls, and the king was induced to pardon the murderers. Scotland under the lead of Robert Bruce established its independence at the decisive battle of Bannockburn in 1314. The spirit of turbulence still prevailed, and in the treatment of captured rivals there was an apparent lowering of the standard of morality, for many instances occurred of the slaughter of prisoners of distinction. On the other hand we do not read of quite so much murdering of the poor and defenseless. Though laws were passed, they were obeyed only by those who were powerless to resist. The whole reign was one of turmoil and disorder, yet the superstitious reverence for the clergy declined, and men called, though in vain, for a government by fixed rules. Edward II, a man far more humane and forgiving than most of his barons, fell a victim to the cruelty and perfidy which prevailed. Having been taken prisoner by rebellious barons, he was murdered by thrusting a red hot iron into his bowels. In this and numerous other reigns prior and subsequent the barons, who enjoyed so many great privileges at the expense of the multitude, not only performed no service useful or beneficial to others, but were murderers, robbers and traitors by nature and by education. Such is the so-called gentle blood of the noble houses of that time. With such a want of morality among the rich and powerful it is no wonder that there was crime and brutality among the so-called lower orders. Security for life or property could not be found, and as a consequence there was general poverty, distress and degradation.

During the fifty years' reign of Edward III the resources of the kingdom were exhausted in great wars to maintain the extravagant and groundless claims of the king to dominion

over Scotland and France. The country was repeatedly burdened with ruinous taxation and drained of its able-bodied men to carry on the struggle. The war with Scotland served only to strengthen the prejudice of the Scotch against British rule, and though Edward was able to lead great armies into France and lay waste great districts, though he gained the renowned battles of Crecy and Poitiers, though the Black Prince became a warrior renowned not only for his courage and capacity but also for his humanity, the net result of the long struggle was merely a little shifting of boundaries, destined soon to be again changed, and the bloodshed, vice and misery of a great war. The nobility, still true to the instincts which had ruled them in the acquisition of their unmerited possessions, were constant law breakers, robbers and protectors of robbers. The chief seats of vice and crime were in the great castles, where the barons, backed by their armed retainers, defied all rules conflicting with their purposes. Yet in spite of all these evils some progress was made toward the evolution of a more orderly state of society. Foreign wars begot a national spirit and the organization, equipment and maintenance of the great armies, which invaded France and Scotland, required a more systematic management of state affairs. In order to raise money Edward found it necessary to frequently assemble Parliament and obtain its assent to his measures. He repeatedly recognized and promised to maintain the great charter, though he still more frequently violated it. Nevertheless Parliament came to be regarded more and more as a great representative of the nation, and the house of commons, superior in morals though inferior in wealth, steadily gained in influence. In the later years of Edward's reign Parliament assumed the right to impeach the king's ministers, and the idea of the accountability of the ministers began to grow from the jealousy of the barons of the king's favorites, on whom he conferred authority. Though the king called on Parliament for grants of taxes, he did not abstain from arbitrarily imposing them on his own authority. He still asserted the right to promulgate laws, formulated by himself and his privy council, without consulting the Parlia-

ment. In his reign the papal power was still further reduced, and a statute was enacted making it a penal offense to procure a presentation to a benefice from Rome, and by another statute persons who appealed causes to the Pope were outlawed. The influence of the clergy over the laity had declined, and the old weapons of excommunication and interdict had lost their edges. The war with France stimulated the English national spirit, and the use of the French language in public acts and documents was abolished. Though Edward, being a man of great energy and ability, ruled despotically, the three forces, of king, nobility and commons, began to assume the respective functions which so long tended to hold each other in check. The king and nobles stood for war, robbery and unmerited privilege, the commons for some small measure of justice. In a depraved and disorganized state of society, physical power and military combination without regard to moral right lead in the formation of states. It is only by slow degrees and countless martyrdoms that the moral force, which protects the helpless and innocent, gains mastery and makes possible a truly great state. The moral purposes of the commons were superior to those of king and barons and therefore contained the stronger vital principle. Their influence has grown and must inevitably continue to grow, as the general moral tone of the people advances. It was during the French wars of this reign that artillery first came into use, and the result of the great battle of Crecy is said to have been determined by the English guns.

The reign of Richard II shows an increasing tendency to resort to judicial decisions of controversies, without any well defined disposition on any part to do justice. Parliament condemned those at the time out of favor without a hearing, and caused many summary executions and forfeitures. Laws were passed but not observed. Lawyers multiplied and business in the courts increased, but decisions were not given with much regard either for law or justice. Though the feudal system was decaying, no firm organization had taken its place. In this reign we find the first reported instance of an uprising of the grievously oppressed common people. John Ball, a

preacher, went about the country preaching the doctrine of the common origin and brotherhood of man and their equal rights to the bounties of nature. The imposition of a capitation tax of three groats per head on all persons above fifteen years of age was regarded by the poor as a most grievous burden. The tax-gatherers proceeded in its collection with usual harshness and indecency, and for an insult to his daughter a blacksmith knocked out the brains of one of them with his hammer. By-standers applauded and the populace came to his defense. Sedition spread like wildfire; there was a general uprising against the dissolute and tyrannical nobility, and much violence was done them. A vast multitude assembled on Blackheath under the leadership of Wat Tyler and Jack Straw, some of whom insisted on kissing the King's mother as she passed through their midst, though without further insult or injury. They demanded an interview with the King, but he, being afraid to trust himself in their hands, went back to the tower for safety. They broke into London, burned the palace of the Duke of Lancaster and cut off the heads of such of the gentry as fell into their power. The King finally asked for their demands, and in response they asked a general pardon, the abolition of slavery, freedom of commerce in market towns without toll or imposts, and a fixed rent on lands instead of villeinage service, all certainly reasonable and less rather than more than their natural rights. The King granted the demands and made a charter to that effect, whereupon the multitude dispersed. With that want of good faith so characteristic of the ruling class through all those disorderly times the King, having gathered an army strong enough to enforce his will, convened a parliament, which revoked the charters and pardons and again reduced the people to the same slavery as before. Many were arrested and executed without trial. Want of an organization through which all might continue to act in concert for their own protection after their separation, left the multitude at the mercy of the King and their lords backed by their mercenary followers. Richard himself afterward fell a victim to the faithlessness of the barons, who combined for his overthrow under the leadership of Henry,

Duke of Lancaster. Having secured custody of the King by treachery, Lancaster issued writs in the King's name convening a parliament, taking care to fill it with those only who were devoted to his interests. The King was impeached and condemned to be deposed, without any real hearing, by a vote of both houses. Thereupon Lancaster stood forth and made a declaration recorded as follows:

"In the name of Father, Son and Holy Ghost I Henry of Lancaster challenge this rewme of Inglande, and the crown, with all the membres and the appurtenances; als that I am descendit by right line of the blode, fowing fro the gude king Henry therde, and throge that right that God of his grace hath sent me, with help of kyn, and of my frendes to recover it; the which rewme was in point to be on-done by defaut of governance, and ondoying of the gude lawes." In this form of jargon he assumed the kingly office. Richard, being a prisoner in his power, soon came to his death, whether from violence or starvation remains an unsettled point. England had now fairly entered on that period of its history, when the villainous deeds of kings and barons were largely perpetrated with the aid of judicial forms, supplemented with cowardly murders of those whom it was deemed dangerous to execute publicly. Substantially all these villainies stand charged to those of so-called gentle, noble blood.

The manners of the times of Richard are indicated to some extent by the make up of his household, which consisted of 10,000 persons, requiring three hundred people in the kitchen. All this multitude was fed from the king's tables at the expense of the state. The reign of Henry IV is not noted for marked constitutional changes. The clergy had lost their mastery over king and nobles and now sought to perpetuate their influence over the multitude by cruelty. In 1401 William Santre, having been condemned as a heretic by the clergy at Canterbury and the sentence approved by the House of Peers, was burned at the stake under a writ issued by the King. The King, having no well recognized title to the throne, sought by such means to draw the clergy to his support. The clergy before his reign had been exempt from capital punish-

ment, but in 1405 Henry caused the archbishop of York to be summarily condemned for treason by a judge specially appointed for that purpose, who without indictment or trial pronounced sentence of death on him, which was promptly executed. The weakness of the King's title caused him early in his reign to court the favor of the commons. In the first year a law was passed at their instance that no judge, arraigned for giving an unjust decision, should plead in defense the orders of the king. In the second year they insisted on the practice of not granting the king any supply until they received an answer to their petition, thus in effect imposing a condition precedent to their grant. In the sixth year they appointed treasurers of their own selection to receive the public moneys, see that they were disbursed for the intended object and render an account to the house. In the eighth year they established various regulations, which they required the members of the king's council and all the judges to swear to observe. In the later years of his reign Henry, having established his position, again asserted his prerogatives, yet on the whole there was a marked extension of the power and influence of the commons. The savagery of the times is well indicated by the passage of a law making it a felony to cut out any person's tongue or put out his eyes, barbarities then perpetrated so frequently as to call for repressive legislation.

Henry V, who during the life of his father had led a wild and dissolute life, exhibited some rare qualities on coming to the throne, chief of which was a regard for law and respect for those who, acting in subordinate capacities, enforced it. The chief Justice, Gascoigne, had sent Henry to jail for insolent conduct in his court, certainly a remarkable exhibition of judicial courage and authority for those times. Henry on coming to power not only exhibited no ill-will on account of it but continued him in office, as well as the other counselors of his father who had frowned on his disorderly conduct. To insure his popularity at home he adopted that expedient so often employed by kings, a foreign war with France, on the pretext of right to sovereignty there. This war brought him great glory at the battle of Agincourt but without profit to

England. On his death the succession passed to his infant son, during whose minority the "protector" named by Parliament continued the war with France with great success, until the appearance of Joan of Arc at the head of the French army turned the tide of battle and caused the English to lose all the territory which they had spent so much blood to acquire. When she finally fell into their hands, fighting in defense of the town of Compeigne, she was accused of witchcraft, condemned by an ecclesiastical court and burned at the stake. Though this appears an exceptionally atrocious act, it accorded fairly with the cruel and treacherous spirit which then prevailed among the leading characters. The assassination of prisoners, either with or without the pretense of a trial, was of frequent occurrence. The Duchess of Gloster was accused of witchcraft in 1447, and, while she escaped with a sentence of imprisonment only, her associates, who were jointly charged with the same offense, were condemned and executed. The title of the kings of the House of Lancaster to the throne, coming through a junior son, had been regarded as questionable, and the Henry's IV, V and VI courted the support of parliament. In the reign of Henry VI, a weak, almost an imbecile prince, the Duke of York began to assert his title to the crown, and at last the flames of that barbarous struggle, termed the war of the roses, between the adherents of the Houses of York and Lancaster broke out. The most important act of parliament in his time was one restricting the suffrage for members of parliament to persons possessing lands yielding forty shillings per year, free of all burdens and within the county. It seems that all freeholders had exercised the right before that time. This reign is also noted for the construction of the first national debt by authority of Parliament.

During the early period of Norman rule the barons, though they slaughtered the poor and defenseless on occasion most ruthlessly, were yet generally considerate in their treatment of men of their own class, who fell into their power. The spirit of caste prevailed, and the lives of prisoners of rank were generally safe in the hands of their enemies. The prin-

ciples of the feudal system were such, that men of rank fought each other in the open and for the glory of the combat, but despised all secret assassination and treachery. By the time of Edward IV a great change had taken place. The barons, whose ancestors for generations had been accustomed to oppress the common people on their estates to the last point of endurance, could take nothing more from them than they were accustomed to receive. The only chance to augment their possessions and increase their importance was to deprive some rival of his property. It was found that to do this effectually, it was usually necessary to deprive him of his life also. A race of men accustomed to take the fruits of the toil of others without return and to despise all useful employments, naturally had no moral code. The frightful barbarity with which the leading nobles of that period murdered each other, renders the history of the time a dreary and disgusting record, yet the fact is usually overlooked that in the main it was a process by which society was relieved of a most cruel and vicious element. Instead of continuing to join their forces to keep the multitude in subjection, they fought each other, and as the varying fortunes of war and intrigue placed one murderous baron in the hands of an enemy, he was murdered, usually to be avenged later by the slaughter of one or more of the same class, who had caused the deed to be done. The war between the branches of the royal family known as the Houses of York and Lancaster shows the crudity and weakness of a system of government based merely on a theory of the inheritance of power. All systems of this kind have their root, not in any desire to promote the public welfare, but in the desire of rulers to transmit their power to their own posterity. They are established by educating the multitude to believe that there is such a thing as royal blood, differing in quality from that of common mortals, and that regal power should be transmitted from the reigning monarch to one of his blood according to a fixed rule. The supposed convenience of this mode of designating a king has led to its acceptance by a large part of the people of the earth in all ages. Though the history of many nations is filled with instances of infant

rulers, utterly incapable of governing the state, of imbeciles on the throne, of idle, dissolute, depraved descendants of great kings, of cruel monsters in human similitude who have scourged the earth, and of the overthrow of weak dynasties by usurpers mounting the throne, usually after wading through blood and smoking ruins; so persistent is the tendency to adhere to this system, that it still prevails in most countries of Europe and Asia. Though Henry IV might trace one line of ancestors back through John of Gaunt, Duke of Lancaster, to Edward III, the title to the throne by the rule of inheritance was undeniably in Richard II at the death of his father. Richard was then a boy only twelve years of age, but lack of years was not his only deficiency in qualification for the administration of the government. He was wanting in force and vigor to rule so turbulent a nation, and Henry seized the throne because he was strong enough to do so. For three generations the succession continued in the House of Lancaster, until the young Edward IV of the York line came to the throne sword in hand. At the battle of Towton Edward followed victory with an order to give no quarter and caused the summary execution of the Earl of Devonshire, who fell into his hands as a prisoner. When Parliament assembled Edward's title to the throne was affirmed. All grants made by the kings of the Lancaster line were annulled and all attainders were revoked. On the other hand they passed an attainder of Henry VI, his Queen Margaret, their infant son Edward and a long list of nobles who adhered to their party, and declared all their estates forfeited to the crown. The form of a parliamentary decision was used, but the spirit of enmity and covetousness, not of justice, dictated the judgment. A court martial condemned the Earl of Oxford and his son, Sir William Tyrrel, Sir Thomas Tudenham and John Montgomery, and caused their execution and forfeiture of their estates. In the north when the Duke of Somerset and Lords Roos and Hungerford fell into the hands of Edward's followers at Hexham they were immediately beheaded, and in like manner Sir Humphrey Nevil and others were executed at Newcastle. The scaffold and the axe of the headsman com-

pleted the work of destruction left unfinished on the battlefield. A rebellion having broken out in Lincolnshire, Lord Welles, who took sanctuary fearing he would be charged with treason, having been promised safety left his retreat and was seized and beheaded along with Sir Thomas Dymoc by Edward's orders. The leaders of the rebels, being soon taken prisoners, were similarly executed. Edward, when not warring with his subjects to maintain his authority, gave himself up to licentiousness and debauchery. In 1470 the Earl of Warwick drove Edward from the kingdom and taking Henry from the tower of London, in which he had been confined and contrary to the general custom of Edward allowed to live, proclaimed him King. A Parliament summoned by Warwick reversed all the acts of Edward's Parliament. Executions did not follow this change in such numbers. The victim of distinction mentioned is the Earl of Worcester. The Yorkists seem to have been more fortunate in getting away. Within six months Edward returned and recovered his kingdom and Henry again became his prisoner. Warwick was slain in battle, and his followers were given no quarter but slaughtered in great numbers. After the forces of Queen Margaret were defeated at Tewkesbury with much slaughter, the Duke of Somerset and many other men of distinction were dragged from the church in which they had taken sanctuary and beheaded. Queen Margaret and her son Edward, heir to the House of Lancaster, were taken prisoners, and being brought before the King, young Edward was stabbed to death by the Dukes of Clarence, Gloster and others. Margaret was confined in the tower, where King Henry expired a few days afterward. Whether he was murdered or died naturally is not known, though the Duke of Gloster is charged with his murder. After a season of rest and dissipation Edward invaded France without accomplishing any notable result. The condemnation and execution of Thomas Burdet for saying, that he wished the horns of a white buck, which the King had killed while hunting in his park, in the belly of the person who had advised the King to commit that insult on him, was but one of his many cruel deeds. The deer belonged to and was a great favorite of

Burdet, and his expression was uttered under the smart caused by its loss, yet judges and jurymen were found servile enough to condemn him, and he was beheaded for his language. It is a most singular fact that with the growth of judicial power and increased study of the law there was a marked increase of severity and heartlessness in the treatment of persons charged with real or fancied offenses. John Stacy, a clergyman, was charged with necromancy, tried, tortured, condemned and executed with the approval of many of the nobility. These men were friends of the King's brother, the Duke of Clarence, of whom the King was jealous. The Duke, having protested against these executions and asserted the innocence of the men thus judicially murdered, was arrested, and a parliament was summoned, before which he was tried on a charge of having arraigned public justice. The King appeared personally as his accuser and prosecutor, and both houses of parliament were so base as to condemn him and petition for his execution. The King's clemency toward his brother extended no farther than to allow him to choose the manner of his execution, and he was thereupon drowned in a butt of malmsey. On the death of Edward IV in the twenty-second year of his bloody reign the succession in his line again fell to an infant, incapable of exercising kingly powers, and Richard, Duke of Gloster, brother of the deceased King, was made regent. Gloster first proceeded to cause the murder of the near relatives and friends of Edward's widow. Though Richard was one of the most conscienceless beings that ever appeared in human form, he yet sought pretexts and arguments to support his grossest villainies and was able to find men vile enough to do the most infamous deeds. To furnish a basis for a claim of right to the crown he caused a preacher, Shaw, to preach a sermon in St. Paul's, charging that Edward IV was a bastard and also his brother the Duke of Clarence and asserting that Richard, Duke of Gloster, only was the son of his father. Here was a most remarkable exhibition of the uncertainties of the transmission of power by inheritance. First there was the question as to whether the House of York or of Lancaster was in the true line. If York, then was the

incapable minor a legitimate heir? On no generally accepted theory of inheritance could Richard claim the throne, yet his cunning and his villainy brought him a brief possession of it. By false promises to their mother Richard obtained the custody of her children. The infant King and his brother were thereupon confined in the tower, soon murdered by Richard's orders and buried in the ground at the foot of the stairs under a heap of stones. The Duke of Buckingham, who headed a revolt against the usurpation of Richard, being taken prisoner was summarily beheaded, as were others of less note. Richard, having established his power, summoned a parliament in 1484 and sought to gain the support of the nation by governmental reforms. The system of extorting money under the name of benevolences was condemned and prohibited, and this king, who ruled in spite of all law, resorted to legal reforms to fortify his authority.

It was impossible however for Richard to blind the nation, either to the fact of his usurpation or the many murderous villainies he had perpetrated, and the Earl of Richmond, backed by a small force brought over from France, but far more by the general hatred and distrust of Richard causing supporters to come to his aid from every side, defeated him at Bosworth, where Richard was killed in battle. Many of the King's supporters died with him, and others, taken prisoners, were beheaded for participation in his bloody work. Richmond, having succeeded on the field of battle and being recognized as the sovereign, was yet at a loss to know on what legal ground to base his title to the throne. Parliament when convened obsequiously declared, "that the inheritance of the crown should rest, remain and abide in the King" without taking trouble to point out a title by descent or to recognize his right merely as a victor in possession. An act of attainder, condemning all the leading noblemen who had fought on the side of Richard, was passed and their estates seized. His reign was disturbed by impostors pretending to be heirs to the throne rather than by persons of the blood. The first was one Simnel, a boy chosen and put forward as the second son of Edward IV alleged to have escaped from confinement

in the tower and to be the true heir to the throne, as Duke of York. His pretensions were first made public in Ireland, where he was accepted as the King throughout the whole island, and a force was raised to invade England in his interest. A landing was made in Lancashire, and some support came to him from Margaret of Burgundy, who sent him 2,000 Germans, and a few Englishmen joined their fortunes with his. A bloody battle was fought in which he was defeated, and being taken prisoner he was deemed so contemptible that he was made a scullion in the King's kitchen. He had no estate to confiscate, so there was nothing to be gained from his execution. A more skillful imposter, said to bear a strong resemblance to Edward IV, was Perkin, who also personated the Duke of York with considerable success and received the support of Margaret of Burgundy. Many English noblemen gave countenance to his pretensions, and Henry, having obtained information of their doings, caused a considerable number of them to be arrested and condemned for treason; part of whom were executed and the rest pardoned. Among those condemned and executed was his own lord chamberlain, Stanley, whose great wealth afforded ground for his destruction. Perkin succeeded in gaining a considerable following, but was defeated and taken prisoner. Henry did not at first cause his execution, but he was soon accused of having conspired to escape from the tower and hanged at Tyburn. The Earl of Warwick and several other great lords were executed for complicity in his treason. Henry's policy was to use the lawyers and the machinery of the courts to destroy the most rich and powerful lords and seize their estates. His avarice was his most marked characteristic. His principal agents for the extortion of money from his subjects were two lawyers, named Empson and Dudley, who used the forms of law and the instrumentality of the courts to rob the people and fill the King's treasury and their own pockets. People having property were falsely or truthfully charged with all sorts of offenses and thrown into prison, from which they could escape only by the payment of heavy fines or commutations. It was in Henry VII's reign that the odious Star Chamber

received the sanction of Parliament, though it had been in existence long before. The secrecy of its proceedings and the arbitrary methods it pursued were the leading grounds of objection to its authority, but Empson and Dudley had little difficulty with ordinary courts and juries. Trials were not had either before an impartial court or jury. The judges were the creatures of the King and the juries were packed to do his work. During this reign much was done to obliterate the feudal system. Numerous acts of parliament were passed against engaging retainers and giving them badges and liveries to wear; thus prohibiting the great lords from keeping up their private armies to aid them in their outrages. The alienation of entailed estates by means of a fine or common recovery was authorized by statute. Henry was probably the most absolute and despotic king England had ever had, but he did most to break the power of the feudal aristocracy. The invention of the art of printing greatly facilitated the dissemination of learning, and the discovery of America stimulated the spirit of inquiry and adventure and brought into play those activities, which have resulted in so much material and moral progress.

The reign of Henry VIII 1509 to 1547, affords a most interesting study for the student of governments and legislation. No more absolute despot ever ruled England and few any other country, yet he exercised his power through the instrumentality of a parliament and of courts and juries. He found no difficulty in condemning to death whomsoever he willed, yet for the most part the condemnations were for a real or pretended offence and under the form either of a bill of attainder or a judgment of a court. He continued the practice, which had prevailed in past reigns, of destroying the obnoxious noblemen, rather than the indiscriminate slaughter of the poor, and the wholesome principle of punishing leaders rather than their more ignorant followers was applied in dealing with the few popular uprisings which disturbed his reign. It is exceedingly difficult to comprehend how Henry maintained even his power, and much more so how he preserved a measure of attachment from his subjects, with all the rank injustice and

barbarity he exercised. Doubtless the destruction of the old nobility and the continued policy of taking off the head of anyone who plotted against the King had much to do with the submissiveness of the lords of his day, many of whom were newly created and received their dignities at his hands.

Ten parliaments were summoned in the thirty-eight years of his reign and held twenty-three sessions. Law-making went on at accelerated pace, and lawyers and numerous courts were constantly employed in administering the law, though with very little regard to justice. Penal statutes multiplied and capital punishments followed not only the crime of murder but a long list of offences. Treason came to head the list of capital ones and with misprision of treason added afforded a basis for charges against any subject, who for any cause was obnoxious to the King. By means of a prosecution on an accusation of this kind the King could, in what passed as a lawful manner, destroy his enemy and take his estate. Persons against whom there was evidence could be tried before the courts, and those against whom there was none were attainted by act of Parliament without the form of a trial. Severe punishments were also inflicted on thieves and robbers to an appalling extent. It is said that 72,000 of these were executed during this reign. But the most conspicuous instances of the use of legal forms to effectuate the will of a despot were those involving Henry's wives. First he tired of the Spanish Catharine, who, when he married her, was the widow of his brother Arthur. After living with her for twenty years he pretended that he had conscientious scruples as to the validity of a marriage with the wife of a deceased brother. He first tried to obtain a divorce from the Pope, but failing there he procured an act of parliament prohibiting all appeals to Rome in causes of marriage, divorce, wills and other suits cognizable in the ecclesiastical courts. He then had Cranmar, archbishop of Canterbury, who owed his place to the King, organize a court and pronounce a judgment annulling the marriage. Previous to this decree Henry had married Anne Boleyn, a younger and more attractive woman than Catharine who was his senior by six years and now quite

faded. After a little time he became suspicious, probably without just grounds, of Anne and caused her to be tried by a jury of twenty-six peers. Though there was no proof of any real criminality on her part, this obsequious jury condemned her to death, and she was beheaded. The next morning he married her maid, Jane Seymour, who had the fortune to die after the birth of a son. Henry rejoiced over the birth of a son and did not deem it necessary to mourn over the loss of a wife. His minister, Cromwell, who had risen to remarkable wealth and influence, fell out of favor, was attainted by act of parliament and beheaded. Then Henry married Catharine Howard, who in turn was attainted by act of parliament and beheaded for unchaste conduct. Though Henry succeeded in carrying out his horrible purposes, the method pursued was a precedent more favorable to the security of life than secret murder or execution by the arbitrary order of the King. Later parliaments and juries were not so subservient, and later despots were not able to dictate bills of attainder and sentences of courts with such ease.

The period of Henry VIII's reign covers the time of the great religious struggle, styled the Reformation, and of his public acts those affecting the church and the religious establishments were of the greatest importance and most far-reaching consequences. Though he professed adherence to the established faith, he denied the temporal power of the Pope in his dominions. But he went much farther, and in 1534 he obtained an act of parliament conferring on him the title of Head of the Church of England, and acknowledging his inherent power "to visit and repress: redress, reform, order, correct, restrain or amend all errors, heresies; abuses, offences, contempts and enormities, which fell under any spiritual authority or jurisdiction." Parliament also made it a felony to imagine or speak evil of the King, Queen, or his heirs. Acting under this authority Henry made his own selection of what he deemed the essential tenets of religion. In 1539, by the Stat, 31, Henry VIII ch. 14. Six articles of faith were established, and a denial of the first article, which declared the real presence of the body and blood of Christ in the

sacrament, subjected the person to death by fire with forfeiture of estate, without the privilege of abjuring the error. Denial of either of the other five articles subjected the offender to forfeiture of goods and imprisonment at the King's pleasure. The cause of religious freedom was greatly advanced by Henry through the translation and publication of the Bible in the English language. Henry seems to have had an idea that the book itself furnished a definite standard of faith. He however was not able to find an abiding interpretation for himself. Parliament was so complaisant as to grant a ratification in advance of such tenets as his commissioners with his approval might formulate, and he soon afterward published a small volume, called the Institution of a Christian Man, which was made the standard of orthodoxy. He soon became dissatisfied with this and published another, styled the Erudition of a Christian Man, changing the standard in some respects. Most important of all his public acts was his destruction of the monasteries, which had become numerous and rich. He began first on the lesser ones, then swept them all away and seized their property; 645 monasteries, ninety colleges, 2,374 chantries and free chapels and 110 hospitals were abolished and their property seized. Though some disorder was occasioned by these acts, Henry found means to conciliate the laity by the uses he made of the property seized. Only in one particular did he meet with any resistance during his whole reign from his parliament, namely that of the granting of taxes, and in this they sometimes made terms with him by which his demands were modified, yet he did not hesitate to force the payment of benevolences. The complete abandonment of all the restrictions imposed on the king by the Great Charter is perhaps best illustrated by Stat. 31, Henry VIII, Ch. 8, by which parliament recognized the king's proclamation as having the same force as an act of parliament. By a later act it provided a court for the enforcement of the king's proclamations. It was during this reign that trade with the Netherlands began to develop, and skilled workmen from Flanders in large numbers came over to England to carry on their trades. In response to popular

prejudices against these more skillful foreigners restrictive laws were made against them. Many clumsy and ineffectual efforts were made to regulate wages, the prices of food and commodities, and the style of apparel. Physicians, barbers and surgeons and various tradesmen were made bodies corporate with special privileges. In 1546 the first law recognizing interest on money as lawful and limiting it to ten per cent was enacted. Fierce religious controversy and persecution for mere opinion began in this reign, and that spirit of martyrdom, which has appealed so strongly to succeeding generations, was manifested by those who from the flames at the stake gloried in death for what they believed to be religious truth. It cannot be said that either Henry or the mass of the people of England in his day exhibited any signs of advanced morality. They did, however, while upholding arbitrary power to an unprecedented point, proceed by better methods. The parliament passed severe and arbitrary laws, visiting death on offenders great and small, but all this was in an effort to evolve order out of chaos and regulate the conduct of men by fixed rules to which all were to conform. The religious struggle was an attempt to extract the real truth from a multitude of errors. Fundamental moral principles were little studied or regarded. The all engrossing motive was personal interest, to be furthered by the possession of property on earth and the luxuries of heaven hereafter.

At the time of Henry's death his son Edward was but nine years of age. By his will Henry appointed sixteen executors, to whom he entrusted the regal power during Edward's minority, which he limited to the age of eighteen. He further appointed twelve councillors to aid them with advice, but on whom no authority was conferred. The Earl of Hereford, afterward made Duke of Somerset, maternal uncle of the King and appointed as one of his executors, was named protector, and as such assumed the actual rulership of the kingdom. The religious controversy went on and Protestantism continued to grow, countenanced and supported by the protector. War with Scotland and with France came on as usual. Lord Seymour, a younger brother of the protector, plotted

against his authority and was thereupon attainted by parliament and beheaded on a warrant issued by Somerset. Notwithstanding the growth of Protestantism the burning of heretics went on, and women as well as men went up in smoke for opinions' sake. Insurrections having occurred because of the destitution of the common people, an act of parliament was passed making it treason for twelve or more persons to meet on any matter of state and fail to disperse at the command of a lawful magistrate. The foreign trade of England had been carried on from the time of Henry III mainly by agents of the Hanse Towns, to whom he gave a charter of incorporation with special privileges. These privileges were taken away by this administration and native traders were placed on an equal footing. An advantageous commercial treaty was made with the King of Sweden, which stimulated trade with that country. Somerset, having made himself distasteful to the leading spirits of the kingdom, was displaced from power and after a short interval put on trial before a jury of twenty-seven peers, among whom were his chief enemies and accusers, condemned for treason and executed on Tower Hill. Early in this reign under the influence of Somerset a bill had been passed mitigating the severity of the law against treason, but later under Northumberland's rule another rigorous act was passed, to which the House of Commons appended the important safeguard of a requirement, that the crime should be proved by two witnesses, confronting the accused. Afterward when a bill to attain Tonsal, bishop of Durham, was passed by the House of Lords, the Commons rejected it because of the non-production of the witnesses. Edward died in his sixteenth year after a reign of seven years, which again illustrated the folly of the transmission of kingly power by inheritance to infants utterly incapable of exercising it. Various acts were passed for the purpose of regulating trade and manufacturers. One prohibited victuallers and craftsmen from combining to raise prices, another made minute provisions regulating the manufacture of woollen cloth, and another denounced regrators, forestallers and ingrossers. Ale and tippling houses also called for regulation, and justices

of the peace were empowered to put them under bond for the maintenance of good order. Thus we see that the law-making power then as now was troubled with questions growing out of trade combinations and the sale of intoxicants.

Mary, eldest daughter of Henry by Catharine, succeeded Edward. She was a bigoted Catholic and a sour old maid. Her brief reign of five years again illustrated the folly of passing supreme power by inheritance in accordance with an inflexible rule. She had no quality of head or heart fitting her for such a station. Narrow bigotry caused the revival of religious persecutions, and 277 persons were burned at the stake. To do this horrible work a commission of twenty-one persons was named, any three of whom could act. Spies, informers and torture were employed to discover victims, and trial by jury was denied. Aside from these persecutions the cruel beheading of Jane Gray, her husband and a number of other prominent men, bore witness to the barbarity of her character. At the age of thirty-seven she married Philip of Spain, son of the Emperor Charles V, her junior by eleven years, an alliance distasteful to her subjects, and which involved England in foreign wars resulting in the loss of Calais, so long held by England as a door of entry into France. In the matter of granting supplies, parliament was not so pliant as in the time of her father, and her demands were refused or modified with novel firmness. Nevertheless she forced contributions of money from her more wealthy subjects without authority of law, to be squandered in the wars of her husband, who had regard neither for her nor the people of her kingdom. As far as lay in her power she restored the authority of the Pope, but was unable to execute his command to restore the church lands, which had passed into other hands.

The long reign of Elizabeth, from 1558 to 1603, is looked on as one of the most prosperous in the whole history of England, and many have been inclined to accord the credit to her. It is one of the arts of the statesman to claim credit for all good fortune that may come from any source and to point out some cause other than his own fault for every evil. Similar craft has been resorted to by the clergy in all superstitious

states for strengthening their authority. Elizabeth was quite as absolute and arbitrary a despot as her father, yet she adhered even more closely than he to the forms of law. For supplies she summoned parliaments, but haughtily rebuked them when they exhibited any disposition to legislate in the public interest, claiming as her sole prerogative the general care of the public welfare. Trials and executions for treason were numerous, the most noted being those of her rival, Mary Queen of Scots, the Duke of Norfolk, Earl of Northumberland and her former favorite the Earl of Essex. She professed great reluctance and sorrow for the executions of Mary and Essex, but whether real or feigned is doubtful, for the writs were signed by her and the convictions were at her instance. In state trials juries were generally called, but in those times afforded no security for a defendant. A verdict of acquittal in opposition to the wishes of the Queen was followed by fine and imprisonment of the jurors. The period of her reign was one of awakening of the activities of the people, not because of her rule but in spite of it. The discovery of America, the great impetus to learning imparted by the art of printing, the spirit of investigation, profoundly stimulated by the reformation, and of adventure in distant seas, all contributed to that mental and physical activity which alone can elevate a nation. In her wars Elizabeth is entitled to more credit than most despots. Though sometimes aggressive and though her battles with foreign enemies were all on foreign soil, her general policy was defensive rather than aggressive. Spain having become the greatest power in Europe, she allied herself with the Netherlands in their struggle for liberty and then with France to curb Spain. The fortunate storm, which disabled the vast armada built by Philip for the purpose of invading and conquering England, followed by the defeat of the great fleet later on, gave her renown and tended to direct British energies in the course which has since made England mistress of the sea. Shipbuilding and sea ventures were induced largely for private gain, in enterprises which might fairly to be designated as piratical. Long before war had been declared between the two countries, British vessels

made many rich prizes by capturing Spanish vessels and pillaging Spanish towns. Her wars, like all others, were expensive, destructive and resulted in main merely in leaving the sovereignty of territory without great change. The effects of the peaceful activities of preparation for war in building, arming and equipping ships, were of the utmost benefit. The art of shipbuilding was greatly advanced, and the people were taught to look out upon a new world, from which in time the ships were to bring in peaceful and beneficial trade vastly greater profits than it was possible to obtain by the capture of all the prizes then floating on the water. Another great benefit came through the barbarous cruelty of the Spaniards in the Netherlands, which caused many skilled weavers and mechanics to go from that country, where the arts were much more advanced, into England. From this period a more rapid improvement in mechanical arts dates. The gain was not so much in the acquisition of a few skilled artisans, as in the knowledge of their arts which was imparted to others and transmitted to succeeding generations. The religious agitation went no farther than an investigation, which assumed the Bible to be the sole authentic evidence of religious truth. The Reformers denied that the book warranted the pretensions of the religious system of Rome. The bigotry of many of the Reformers was not less than that of the Catholics, and heresy against their interpretation of the Bible was as deadly a sin in their eyes as their own opinions were in those of the Catholics. The search after religious truth led directly to an inquiry into the foundation of the claims of the clergy to temporal power and revenues. It was a movement distinctly hostile to the temporal power and earthly advantages of the church officials, priests and monks. This search after the basis of authority naturally led to an inquiry into the basis of the King's authority and the right of the people to freely discuss matters of public concern. In 1576 Peter Wentworth, a Puritan, made a set speech in the House of Commons on the subject of liberty, and especially on the privilege of members of the house to freely discuss public questions, maintaining that the Queen's prerogative was subject to limitation of law.

Strangely enough the house itself took offence at his bold utterances, committed him to the custody of the sergeant at arms and appointed a committee to consider his case. After a month the Queen graciously ordered his release. Elizabeth achieved a great success by getting the discordant factions in Scotland to submit their differences to her for arbitration, but the treatment of Queen Mary, her long imprisonment and final execution, bear witness to the malignant enmity of Elizabeth and exhibited a great moral defect in her character. Though the influence of Elizabeth in Scotland was greater than that of most of her predecessors, that kingdom was in constant turmoil and civil strife. Ambitious men and women murdered and robbed each other remorselessly to gain power and place. It is probable that Queen Mary was privy to the murder of a husband, but her accusers were many of them guilty of bloody deeds of little less atrocity. Elizabeth sent troops into Ireland to make the nominal sovereignty of the English crown, which had been recognized for four centuries, real and effective as a governing force, but her generals met with very little success. Instead of yielding revenue, the Irish possessions entailed a burden of expense. Aided by the Spaniards, the Irish, who still adhered to the church of Rome, were able to elude her generals. It was in her reign that the first British settlement was planted in America by Sir Walter Raleigh in Virginia, but it was abandoned and the discontented settlers taken back to England by Drake. Various bold seamen sailed along the American coast and into the West Indies. The impulse which started men out on the seas came, not from the rulers, but from the oppressed multitude. The freedom of life on the ocean had its influence on the habits of thought of the navigators, and the spirit not only of adventure but of individuality and independence was profoundly stimulated. Elizabeth is sometimes given great credit for having stimulated commerce and promoted intercourse with foreign countries. It is true that advantages of this kind accrued from her foreign wars and alliances, but they came as incidents and not as results of a settled policy of trade expansion. On the contrary no other British sovereign did so much to burden com-

merce with tyrannical exactions. To reward her courtiers and favorites she issued letters patent granting monopolies of trade to divers persons in a great number of articles, including salt, starch, potash, vinegar, lead, steel, coal, iron, glass, paper, tin, sulphur, calf skins, brushes, pots, bottles and a great number of other articles. This resulted of course in the grossest extortion by the monopolists and the greatest hardship to the general public. For the purpose of enforcing their monopolies the patentees were given extraordinary powers of search and seizure, which enabled them to act with the utmost oppression. Though there was very little of law or justice for the common man, there had grown up a general disposition to submit to authority and to respect the judgments of the courts, no matter how oppressive. The Spanish war profoundly stimulated the patriotic sentiment and feeling of national unity. For the treatment of all disputes and dealings with foreign countries the Queen's government possessed the full confidence of the country and was therefore at the head of the whole public force of the nation. At home the power of the nobility, who in times past had provoked so many civil wars, was broken, and while rank injustice lay at the foundation of the whole system, there was better order, greater industry and more prosperity than before. Elizabeth did not summon parliament frequently, yet there was much legislative activity in spite of her vigorous and haughty assertion of her prerogative. The early statutes of her time are notable for their verbosity. There was a long one regulating with great particularity artificers, laborers, servants and apprentices, and one, ostensibly for the maintenance of the navy, but really regulating the use of fish and meat and the exportation and importation of various commodities. The spirit of the time found expression in the many criminal statutes, among which were acts punishing perjury, embezzlement, coin-clipping (declared treason) forging, fantastical prophecies, buggery, vagabonds calling themselves Egyptians (punished with death), unlawful taking of fish, deer or hawks, counterfeiting foreign coin, bastardy, rape, burglary and horse-stealing; and making wandering persons pretending to be soldiers or mariners,

felons without benefit of clergy. There were numerous acts relating to procedure in the courts, among which was the statute of jeofails, relieving suitors from some of that extreme technicality, which the courts had observed with reference to pleadings and writs. Religion came in for its full share, and the effort to compel uniformity of religious thought and observance was continued with severe penalties for violations of the acts. More liberal in tendency were acts relating to the transfer of lands by deed of bargain and sale and fines and common recoveries, and with reference to fraudulent deeds and conveyances. It seems to have been thought necessary to regulate everything by law, and numerous acts, regulating the manufacture of cloth, of hats, caps and various articles and the measurement of wood sold for fuel, were passed. There were laws enacted for the collection of debts from receivers of public money, relating to bankrupts, usury, sewers, navigation, and a number of them relating to repairs of highways. The exportation of various articles, especially sheep and pelts, was prohibited. The two great universities of Oxford and Cambridge were incorporated by act of parliament, and authority was given for the establishment of hospitals or abiding and working houses for the poor. The erection of iron mills within twenty-two miles of London was prohibited, as was that of a cottage with less than four acres of ground, if built outside a city or town. Some thought of the public welfare was exhibited in an act for the relief of the poor, one to reclaim marsh lands, one creating a special court for insurance causes, and another to prevent extortion by sheriffs and bailiffs.

In 1600 the Queen granted the first charter to the East India Company with a capital stock of £72,000, which made a successful venture with four ships. In 1582 the number of seamen in England is given at 14,295, and of ships 1,232, of which 217 only were of over eighty tons. The process of emancipation from the ancient personal slavery during this reign reached its end, and after Elizabeth's time there were no more slaves, though the system of land tenure left many in a condition very little removed from servitude.

On the death of Elizabeth the crown passed to James, King of Scotland, thus uniting the two countries, so long intensely hostile to each other, under the same monarch. Though the title of James was very generally and cordially acknowledged, the fact that he came from Scotland contributed somewhat to the growth of that spirit of freedom in the House of Commons, which was manifested in his time. In prior reigns attendance in parliament had been regarded rather as a burdensome duty than a privilege. Returns of elections were made to the chancellor, who assumed the right to decide who were elected. A controversy having arisen over the right of Sir John Fortesque, who had been outlawed, to sit in the house by virtue of an election, the house asserted its right to determine the question and reversed the chancellor's decree excluding him. At the King's suggestion the House of Lords asked a conference on the subject, but the commons absolutely refused and asserted that the question was solely of their own privileges. In another instance they established their right to punish any persons causing the arrest of members of the house, including the officer making the arrest. In 1605 the great Jesuit plot, to blow up the parliament house with gunpowder at the opening of parliament and thus destroy the King and members, culminated in discovery and the arrest, trial and execution of a number of persons implicated. The King inclined to leniency and checked rather than encouraged numerous prosecutions. The spirit of independence and importance continued to grow in the house, and in 1607 the commons for the first time began keeping a regular journal of their proceedings. The boldest and best act passed during the whole reign was Ch. 3, 21 James I, by which all grants of monopolies by patent or otherwise were condemned and declared "utterly void and of no effect and in no wise to be put in ure or execution." An exception however was made in favor of inventors, to whom patents for monopolies of their inventions for twenty-one years were allowed. It is also noticeable that further exceptions were made in favor of certain individuals, who had sufficient influence to control parliament. Corporate charters, not only to cities and towns but

also to crafts, fellowships, manufacturing and trading companies, were also allowed with special privileges and rights of monopoly. There was during this reign much legislation relating to courts, some of which tended to diminish and some to increase the abuses committed in the name of law, and there were further acts to regulate religious opinions. The discovery of the new world and the far east occasioned claims of sovereignty by European kings over distant lands. For the adjustment of these claims the Spaniards and Portuguese applied to the Pope, who in the plenitude of his pretensions granted the east to the Portuguese and the west to the Spaniards with a reservation of his spiritual mastery over all. Against this sweeping claim the English, Dutch and other Protestant nations claimed sovereignty over such parts of the world as were first discovered by any of the nation. During James' reign the first permanent settlements in America were made. The East India Company received a new patent and increased its capital stock to £1,500,000. Factories for trading were established and conflicts with the Dutch traders began, notwithstanding the political alliance of the two countries. Trade increased and from Christmas 1612 to Christmas 1613 we are told that exports were £2,487,435 and imports £2,141,151. This was the age of those literary and intellectual prodigies, Shakespeare and Bacon, the latter a strange combination of moral obliquity and brilliant intellectuality, to whom some give the credit of completely revolutionizing the system of reasoning and methods of investigation in all scientific researches. The reign of James is generally characterized as weak and inglorious, but it was one of real progress, and though not a strong man, he was not so bad at heart as most of his predecessors, and gave the awakening forces in his kingdom a better chance to grow. He loved peace better than war, and though he did not entirely avoid bloody conflicts with other nations, his wars were of minor importance. The Puritans grew in number and in influence in Parliament and were leaders in asserting its independence.

When the effects of educational influences on the efficiency and usefulness of governments and governmental agencies

are fairly understood, we shall have made great progress in the science of social organization. No period better illustrates the potency of such influences than that of the reign of Charles I 1625 to 1649. As his father James was less of a tyrant than his predecessors, so Charles was even a more mild and far less absolute ruler than his father, yet influences were at work on the public mind which caused him to be condemned to death for his despotic acts. Magna Charta had ceased to be read or remembered through the despotic reigns of Henry VII, and his successors down to James. Its forms were observed in some particulars, but its spirit was utterly ignored. When Henry VIII threw off the domination of the Pope and took on himself the title of head of the church in England, he laid the foundation for that religious struggle between the reformers and the crown, which culminated in the reign of Charles. In the Catholic states of Europe the reformers attacked the papal authority, primarily for its own abuses, without entering on any inquiry into the grounds for the king's temporal power. Hostility to kings was often manifested because of the support given to the Church of Rome, but this hostility led to little or no inquiry into the rights of temporal rulers in purely temporal matters. In England however the kings, having successfully resisted the Pope and established the independence of the state in ecclesiastical matters, turned their attention to the enforcement of their own creeds and ceremonials on the people. The spirit of the Reformation was a spirit of inquiry after religious truth. During prior centuries the multitude, following the temporal rulers who were almost as ignorant and bigoted as themselves, had been content to receive their religion in such form as it was given to them by the priesthood. The reformers sought a purer source of instruction in the Bible, on which the church claimed to found its authority. They did not seek truth in the open and accept it on its own credit, but assumed that all of religious truth that had been revealed to man was contained in the one book. The reformers, especially the Puritans, were most earnest and zealous students of the Bible, and sought to conform their lives rigidly to its teachings.

They found that there was little that was common in the simple purity of Christ and the elaborate ceremonial of the Roman Church. They therefore became bitterly hostile to the images, the genuflections, and pomp of the cathedral, and insisted on a simple, austere form of devotion. It was the misfortune of Charles in 1633 to place at the head of the religious establishment, as archbishop of Canterbury, William Laud, and commission him to reduce the English Churches to a complete uniformity of ceremonial. It was yet more unfortunate that Laud was devotedly attached to the forms of religion and insisted on a most elaborate ceremonial and the use of all those symbols and postures, which were so obnoxious to the Puritans. These he undertook to enforce by virtue of the authority he held under the King. This naturally led to an inquiry into the right of the King to dictate and enforce a mode of worship which the Puritans found to be utterly at variance with the simple beauties of the life of Christ. It was not far to pass from an inquiry into the spiritual authority of the king to one into the basis of his temporal power, and Magna Charta afforded a basis of challenge of the king's right to levy arbitrary taxes. We have seen that in James' time the commons under the lead of the Puritans began to assert their independence and authority with a spirit never before shown. Charles found his first parliament disposed to advance rather than abate its claims. To his call for money to carry on the war to recover the Palatinate for his brother-in-law, the elector, the House of Commons responded, that it had no confidence in Buckingham, whose counsel Charles followed, and asked that before they granted a further supply than the very small one they had already voted, the King would name counsellors whom they could trust. Charles answered by dissolving parliament, but not till after an act had been passed for the observance of Sunday, a point very much insisted on by the Puritans, and to restrain tippling in inns. A second parliament was summoned, which convened March 17, 1627, with the same element still dominant in the House of Commons, notwithstanding the efforts of the King to obtain a majority favor-

able to his views. The first act done was the formulation of a petition "concerning divers rights and liberties of the subjects," in which they recited violations of Magna Charta and of numerous statutes for the protection of the citizens against arbitrary power, and complained especially of arbitrary levies of taxes and contributions by the King without the authority of parliament; of arbitrary arrests and imprisonments and denials of the writ of habeas corpus where arrests were at the King's command; of summary convictions and executions without due trial, by commissioners exercising extraordinary powers; of the quartering of soldiers on private citizens contrary to law; and of other denials of justice, and concluding with a prayer, "That in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm." To this petition the King graciously responded in full parliament, "*Soit droit fait come est desire.*" Let right be done as is desired. This was followed by another act for the observance of Sunday. Nothing could better evidence the tendency of the human mind to cling to mere form and outward show than this and kindred acts. Professedly in the interest of religion, it had no substantial bearing on the observances of the duty of man to man, which after all is the way in which obedience to divine law can be shown. Another act prohibited the sending of children beyond the seas to be educated in popish doctrines. Attacks on the favorite Buckingham continued, and the commons sought to impeach him. Charles, finding parliament so intractable, dissolved it, but further grants of funds being necessary to carry on his foreign wars he summoned another, which met in 1629 after Buckingham had been murdered. During the interval between the second and third parliaments the King had proceeded in the old way to collect taxes and otherwise continue the grievances complained of in the petition of rights. When parliament assembled complaints were at once renewed with increased emphasis, and the King to be rid of it dissolved the parliament without any act being passed. He then undertook to rule without a parliament, and it was eleven years till the next one convened. During this time he went on in

the old way, exercising arbitrary powers under claim of right by virtue of his royal prerogative. Though he was far less arbitrary and tyrannical than either Henry VIII or Elizabeth had been, the state of the public mind had become such, that acts, which attracted little attention and met with no resistance during those reigns, called forth the most vigorous protests and were generally condemned when perpetrated by his authority. The court of Star Chamber, which was established in the third Henry the VII as a court made up of the chancellor, lord treasurer, and keeper of the privy seal or two of them with a bishop, a lord of the council and the two chief justices of the King's Bench and Common Pleas, for the trial of specified cases, had greatly extended and abused its powers by condemning persons secretly, without allowing a jury trial, and therefore was very obnoxious. Another court, called that of High Commission, which exercised a similar arbitrary authority in ecclesiastical matters and the power of punishing offenders charged with heresy and other offenses of a religious character, was equally unpopular. When Charles finally yielded to necessity and summoned a parliament in 1640, the first business undertaken was an attack on Strafford his chief minister. The Protestant Scots were in open rebellion against the efforts of archbishop Laud to impose his system of formal worship, and the majority of the Parliament were in sympathy with the Scotch rebels. Thus the peculiar spectacle was presented, of a British Parliament backed by a Scotch army in its controversy with the King. Finding Parliament far more intent on redressing public grievances than on granting him supplies or upholding his authority, the King hastily dissolved it. He found it necessary, however, to soon summon another, which convened on Nov. 3, 1640, and is known in history as the Long Parliament. It began by pushing the impeachment of Strafford and caused him to be condemned and beheaded. After the passage of some acts of minor importance, by Ch. 10-16 Charles I the Court of Star Chamber, which had become so hateful, was abolished, and by Ch. 11 of the same session the court of High Commission was also put out of existence.

Chapter twenty prohibits the summoning of persons to take the order of knighthood, by which great extortions had been practiced by the King. By these acts the most potent instruments of arbitrary power were destroyed with the concurrence of Charles. Prior to that time all the judges had held office during the pleasure of the king and were his chief instruments of oppression, both in taking the lives of those he wished to destroy and in robbing people of their property through judgments rendered in the name of law. At the request of parliament all the judges were given new patents to hold office during good behavior, thus rendering them to some extent independent of the King. A rebellion of the Irish, who still adhered to the Catholic faith, was attended with great barbarities on their part, resulting largely from religious zeal. Parliament was more intent on remedying grievances than on subduing the Irish rebellion. A committee appointed for that purpose brought in a remonstrance against many abuses, which was published and vehemently discussed throughout the nation. The King published an answer to it. The Commons sought to limit the King's power by numerous restrictions and declared that the interposition of the Peers in the election of members of the House of Commons was a breach of its privileges. A majority of the Peers sided with the King, and the two houses could not agree on legislation. The clear preception of a multitude of abuses of governmental powers, which the sovereigns had long been accustomed to exercise, and the free discussion of them, led at once to a remarkable ferment of the public. Hatred of ecclesiastical usurpation could only find full expression coupled with hatred of civil tyranny. An abuse of power was seen to be an abuse whether under the guise of spiritual or temporal government. The pent up protests against the oppression of ages burst forth in all its gathered force, and the democratic spirit daily gained in strength and boldness. The King was slow to realize the force of the current and, when he did, he took rash measures to check it by causing a charge of treason to be lodged in the House of Lords against Lord Kimbolton and five of the leading members of

the House of Commons. A sergeant at arms in the King's name demanded the five members from the house, but the house asserted their privilege from arrest. The King then went in person to the house and demanded them, but as they were not present he got no answer. The excitement continued, and the claim of Privilege of Parliament suddenly grew into one of vast and continuing importance. The multitude sided with the House, and the King found himself without support. Not only the men but the women also joined in tumultuous denunciation of the Papists and in support of the Commons. The King retired to York and refused his assent to the acts of Parliament. The leaders formulated their demands and submitted them to the King, by which they sought to place the executive power in a ministry responsible to parliament, to secure the judges against the influence of the King, and wreak vengeance on the Catholics. The King, perceiving that the real purpose of Parliament was to effectually curtail his power, refused to make further concessions. Both sides prepared to use force and civil war ensued. The advantage was generally on the side of the King in the first stages of the conflict, but at the hard fought battle of Marston Moor the parliamentary forces under Cromwell gained a great victory. Attempts were made to come to a settlement of the controversy, but no basis of accommodation could be agreed on, and the Commons found time to proceed with the impeachment of Archbishop Laud, whom they caused to be condemned to death by the vote of a shadow of the House of Lords, seven only of whom voted on the final decision. At Naseby the King met with a defeat which proved decisive of the war, and from that time on the success of the parliamentary forces was continued, until the King adopted the desperate expedient of delivering himself up to the Scotch forces, then assembled near London. After much negotiation the demand of the Scots of pay for their troops was acceded to by Parliament and £400,000 was agreed to be paid. Thereupon the King was delivered to commissioners appointed by Parliament. Then followed the usual difficulty ensuing after a civil war, the disposition of the

victorious army, clamorous for arrears of pay, and which Parliament desired to disband. Cromwell now shaped events. He first seized the person of the King and became the champion of the cause of the soldiers, at whose head he assumed authority. Dissensions had grown up between Presbyterians and Independents, in the House and out of it. Cromwell placed his dependence on the army. The King had the indiscretion to attempt escape from Hampton Court, where he was detained, but fell into the hands of Hammond, governor of the Isle of Wight, a devoted adherent of Cromwell. Various uprisings occurring in England and Scotland, Cromwell at the head of the army proceeded to restore order by the strong hand of military power. While he was thus engaged, the Parliament attempted to act independently and make a settlement with the King, by which the monarchy would be restored with limitations of power dictated by Parliament. Cromwell, having crushed opposition without, proceeded to enforce his mastery on the Parliament by purging it, *i.e.* excluding from its sittings the Presbyterian members who opposed him. The remaining members then proceeded with a high hand and having wholly ignored the lords, whom they could no longer control, they charged the King with treason and organized a court of 133 members, named by the Commons, to try him. The twelve judges were at first appointed among the number, but as they denied that the King could be tried for treason, they were left off the list. Like many other courts organized to take men's lives, it condemned the King, contrary to all established doctrines of English law, and he was executed. Other persons obnoxious to the dominant power in parliament were tried by a newly organized court and condemned to death. In the exercise of their newly acquired power Cromwell and his followers pursued substantially the same tyrannical methods that had been followed by the kings, and sentenced men to death by court martial and other judgments, when it suited their convenience to do so. In levying taxes they raised far greater sums than any king had ever obtained with or without the concurrence of Parliament, and much by methods as irregular as any of which

they had complained so loudly. Nothing could better illustrate the proneness of men intrusted with power and restrained by no effectual check to abuse it. The Parliament having killed the King assumed full governing power and under Cromwell's guidance exhibited remarkable vigor. Not only were all the adherents of the king in England forced to submit, but Ireland was reduced after a barbarous warfare, in which many people were ruthlessly slaughtered and refused quarter after defeat. The Scotch having refused to submit to the British rule and invited Charles II to take the throne on most humiliating conditions, war was waged against them till Charles after many adventures by the aid of loyal friends escaped through England to Normandy. Scotland was reduced to submission, and war was then waged on the sea against the Dutch with varying success. The Parliament having shifted attention from the achievements of the army to those of the navy, and having determined to reduce the land forces, Cromwell backed by his grenadiers entered the house of parliament, ordered its members to disperse and declared it dissolved. Soon afterward he convened a body of 128 persons, designated by himself from England, Scotland and Ireland, to whom he entrusted all powers of state, but he soon dismissed them after their having by a formal deed of assignment restored the supreme power into his hands. A council of army officers then bestowed on Cromwell the title of Protector and prepared what was termed "the instrument of government," which provided for a council of not more than twenty-one or less than thirteen to hold during good behavior. The Protector was given full executive powers, and he was to summon a parliament every three years and allow them to sit five months. A standing army of 20,000 foot and 10,000 horse was established. The war with the Dutch resulted in further successes for the British, and a peace was concluded on favorable terms. Cromwell then summoned a parliament, chosen at an election at which the franchise was restricted to those having estates of £200 value, of 400 members from England, thirty from Scotland and thirty from Ireland. After a session in which all the articles

of Cromwell's governmental scheme were discussed with great freedom, he became disgusted and dissolved the parliament. Another was summoned in which he secured a favorable majority by excluding many of those chosen who were opposed to him. This Parliament proposed to make him King, and he was very desirous of accepting, but such had been the force of his own teachings, that the army, on which he had at all times relied, would not consent to it; nor would the members of his own family consent, and he felt forced to decline. In 1658 Cromwell died, having ruled the three kingdoms with more vigor and achieved more success on the sea than any of the so-called legitimate rulers who had preceded him, without any settled system of government or recognized basis for his authority. He in fact gained general respect for his abilities and knew how to control an army, ever the surest support of despotic power. The judges he chose to administer the law are given credit for integrity and impartiality, virtues little known by their predecessors. The system of government administered was not a very radical change from that to which the people were accustomed. That part which always comes nearest the people, the courts, was a continuation of the old system with the most obnoxious tribunals, namely the Star Chamber and High Commission, eliminated, and with judges of more integrity and juries of far more independence. Parliament had always been regarded as an institution of the government, representative of the people. The great change was in the exaltation of its prerogatives and power, but even as to this the real power was still wielded mainly by Cromwell, styled protector, rather than king. By the religious agitation and the teachings of the Protestant preachers the multitude had been educated to deny the right of any human authority to dictate forms of worship, and the questioning of the right of the king to take his subjects' lives or property followed almost as a necessary corollary. Cromwell's rule, though tainted with many moral blemishes, was in all essential points an advance and improvement on what had preceded it. He was placed at the head of the state, not from the accident of birth but by capacity to organize and

rule. Parliament became a living force, exhibiting the intellectual power and impulses of many vigorous minds, instead of being a mere instrument of the king's will. Judges began to think of doing justice instead of seeking merely their own advancement by subserviency to the king. The House of Lords, which since the beginning of the War of the Roses had been always filled with favorites and dependents of the king, faded into nothingness in a time when the foundation of their claims to power was scrutinized. Cromwell's great capacity was exhibited more strongly in the organization of the army and in the efficiency of his administration of civil affairs than in the destruction of ancient abuses. Efficiency of organization is equally essential in every form of government. Coöperation for the accomplishment of common ends is essential to all great achievements, and this implies, either that the multitude must follow the dictates of a leader, or must move in concert in accordance with established rules thoroughly comprehended by each so far as his conduct is affected. The former is the simpler combination, the latter the more advanced and efficient. Cromwell was a despot, who resorted to educational methods in the exercise of his power, as all great leaders necessarily do. He taught the soldiers obedience and mutual confidence. He taught the citizens obedience to law, which still lived on though the king's head was off. In these comments doubtless far too much is attributed to Cromwell, the leader. Many men of less note wielded potent influence in that period when capacity, rather than title, made leaders.

On the death of Oliver Cromwell the council recognized his son Richard as his successor. A new parliament was summoned and also a general council of officers of the army, but discord prevailed, no leader having either the ability or the authority to direct the councils of the nation, and no common tie existing of sufficient strength to induce harmony. Parliament was dissolved and Richard's authority was no longer regarded. Whatever existed of governing power was in the council of state. It was decided by them that the Long Parliament, which had been dispersed rather than dissolved

by Cromwell, should be reconvened, and about seventy of its members were gathered into a session designated as the Rump Parliament. Charles II prepared to invade the kingdom and assert his right, and the royalists everywhere made ready to support him. The rivalry between the officers of the army and Parliament increased, till it reached an open clash of authority, and the army under Lambert forcibly turned the members away, when they attempted to meet in the Parliament House. General Monk having succeeded in bringing the army under his command from Scotland and the Parliament having reconvened, it finally voted its own dissolution and issued writs for the election of a new one.

The elections resulted overwhelmingly in favor of the royalists. Parliament assembled and received a letter from the king, in which he promised liberty of conscience, recognition of the authority of Parliament in certain particulars, pay for the army, and a general amnesty, with such exceptions only as Parliament should make. The House of Lords again convened, the King was solemnly proclaimed and invited to return and take possession of the government. During the protectorship taxes were levied in the form of monthly dues, excise and customs. In 1653 the post house had grown to sufficient importance to be farmed out at £10,000 a year. The Puritans, to escape the persecutions of Laud in the time of Charles, had emigrated in large numbers to New England, where at the outbreak of the civil wars they were estimated to number 25,000. Among the zealous reformers of the commonwealth was John Milton, whose fame, like that of Shakespeare, was reserved for later ages. Charles on his accession named chief officers, who were generally satisfactory to the people. These were a chancellor, steward of the household, high treasurer and secretary of state. As the king had been recognized by the Parliament, the compliment was returned and the Parliament, though not summoned by him, received his recognition by formal act of Parliament. (Ch. I. Charles II.) All judicial acts of the commonwealth were confirmed. Parliament excepted from the general amnesty those who had taken an immediate part in the execution of the king, and six

of his judges were tried and executed. In its grant of tonnage and poundage the Parliament fixed the rates to be charged on each article in a long schedule alphabetically arranged and published with the act, thus establishing a definite system of customs.

The spirit of independence, which had dominated the Parliament during the reign of Charles I, still lived under Charles II, notwithstanding the general feeling of loyalty to the king. The disposition to freely discuss all public matters in the House of Commons was manifest at each session. The king and the nobility were no longer the sole nor even the main representatives of the nation. There was a growing public sentiment among classes which in former years had taken no part in governmental affairs. Merchants, farmers, and mechanics, had their convictions in matters of religion, and were discussing state affairs. The attention of the public was now fairly turned toward foreign colonies and trade abroad. Rivalry with the Dutch, who had led both in manufacturing and ship building, brought on a naval conflict for the mastery of the sea, injurious to both and indecisive in result, one of the consequences of which, when peace was made, was the transfer of New York to the British. Though there was so much public discussion of public matters, it seems surprising that there could be such adherence to forms in the trials of persons charged with offenses, and so many cruel and unjust executions by judgments of courts. The virulence of religious prejudice must be charged with most of it. In attempts to enforce the acts for uniformity of worship many Scotch and other covenanters and nonconformists were cruelly murdered. On the charge of a popish plot to kill the king and reinstate popery many distinguished men were tried and condemned on the testimony of vile informers, and much innocent blood was shed. With the spirit of individuality and freedom, which had become so prevalent, there was a fierceness and brutality of a peculiar order, which perpetrated monstrous injustice in strict accordance with established legal forms. Here and there glimmerings of light appeared, and occasionally a jury acquitted an innocent man, but harsh and bloody

vengeance on those charged with an offense seemed to accord best with the fierce spirit of the age. From this reign the organization of those great political parties known as Tory and Whig dates, the former attached to the Crown, the latter asserting the rights of the commons, though in later years divisions have occurred of a wholly different character. From this reign also dates the assertion by Parliament of the right to direct the application of public moneys and be informed as to the use actually made of it. The independence manifested by the commons led to the bribery of members by the ministry in order to carry their measures through Parliament. This, though bad, was a better condition of affairs than that under the kings who secured the passage of their measures by intimidation and constraint of members, for it left the honest ones still free to act and to speak. In levying taxes the old systems were largely abandoned and new expedients adopted. Land taxes were based on value and taxes on incomes, bankers, money and stock were levied, with excise taxes and duties on imports. The first Parliament passed an act declaratory of a policy long pursued. It is entitled, "An act for the encouragement and increasing of shipping and navigation," and prohibits the importation of merchandise from the colonies in Asia, Africa and America, in any ships but such as belonged to people of the British Isles, under penalty of forfeiture of all of them, and excludes aliens from dealing as merchants or factors in the plantations. The same provisions were extended to importations from Russia and Turkey. By Ch. 24 of the acts of the first session the court of wards and liveries was abolished, and the feudal incidents to land tenure of wardships, liveries, primer seisins, ousterlemanis and forfeitures by marriage, were taken away, as was also all tenure by knight service, and all tenures thereafter to be created by the king were required to be in free and common socage. Purveyances were prohibited and, in lieu of the feudal revenues which had been enjoyed by the king, a far better source was provided in the excise taxes. Chapter thirty-five provides for the establishment of a post office, recites that several public post offices have been heretofore erected, and provides for the

appointment of a postmaster general. This was the beginning in England of that great postal system, which is now world wide and has become the most economical and efficient business establishment ever organized by man. Among the other important acts passed were ones, for the government of ships and forces at sea; for regulating corporations; to prevent vexatious arrests and delays in suits at law; against the Quakers; regulating the militia; requiring uniformity of public prayers and religious ceremonies; to prohibit printing seditious pamphlets, etc.; for the encouragement of trade; for the holding of Parliaments once in three years at least; prohibiting the importation of cattle from Ireland; for rebuilding the city of London (which had been nearly destroyed by fire); to prevent and suppress seditious conventicles; to prevent the planting of tobacco in England and regulating the plantation trade; against popish recusants; for the prevention of frauds and perjuries (the substance of this act, which requires certain contracts to be in writing, has been reenacted in substantially all English speaking states); for taking away the writ *de heretico comburendo*; requiring corpses to be buried in woolen, and providing the writ of *habeas corpus* to secure the liberties of subjects. Other acts relating to the king's revenue, and restrictive acts arbitrarily regulating manufactures or restricting trade, were passed, as well as some tending to a better administration of justice. It is to be observed that the best acts are usually either those repealing an existing law, or those prohibiting an abuse of his power by the king. Of the beneficial constructive acts that creating the post-office is the most notable, the others are of more dubious value. The marked progress of the nation went on, partly by reason of, but more in spite of the government. Restrictive acts affecting trade and manufactures were passed in the interests of favored persons and classes, but the spirit of the nation was sufficient to go forward in spite of such obstacles. The capacity for combination and coöperation steadily developed in connection with the building of ships and the prosecution of trade and manufactures. Organizations of men to do useful things were formed outside the governmental system with

little assistance from it and often in spite of its interference. In these fields the great lords and landed proprietors had little part, but the landless younger sons and their descendants and the more humble traders and artisans, joining in gainful occupations, promoted commerce and its instrumentalities, and thereby made manufacturing on a larger scale practicable. It is of the nature of each useful and productive employment, that an exchange of products with those engaged in other industries is essential to a high degree of prosperity, while the wars of kings are destructive of the products of industry and restrict commerce. Yet through jealousy of their rivals in trade the British merchants encouraged war with Holland to their own great detriment, and the inordinate greed of traders has often since sought aid from the destructive agencies of the state.

James II came to the throne with an unquestioned title, but distrusted by the people because of his leaning to the Catholic religion. Though at first received with a strong feeling of loyalty, he was wholly wanting in tact as well as in steadiness of purpose. He not only offended the religious prejudices of the people by attending mass, in violation of the act of Parliament prohibiting its celebration, but placed Catholics in office without exacting the required oath. He proclaimed toleration of all religious beliefs, but this was in violation of the law, and as it was believed to be done solely in the interest of the Catholics, though applying in terms to the persecuted dissenters, it offended the latter as well as the adherents of the established faith. He also attempted to assert a prerogative right to taxes without a grant by Parliament. The most abhorrent acts of his reign were those following the attempt of the Duke of Monmouth, an illegitimate son of Charles II, to enforce a claim to the throne, backed in Scotland by the Duke of Argyle. The rebellious forces were quickly and easily overcome and cruel butcheries followed, but more cruel and cold blooded than those perpetrated by the soldiery were the executions for treason under sentence of that monster of judicial cruelty, Jeffreys, chief justice of England, who in a very brief time caused the death of 251 persons, many of

whom were innocent, but all of whom were found guilty by packed and coerced juries. James attempted to restore the Court of High Commission, and for that purpose appointed seven commissioners with unlimited authority over church affairs. Nothing more obnoxious could have been done by a Papist. When the storm of public indignation had been raised by the arrest, trial and acquittal by a jury, of six bishops, who remonstrated against his order to read his declaration of indulgence in all the churches immediately after divine service, and his eyes were open to the fact that he was without support in any quarter, he hastened to correct his errors by revoking all his most unpopular acts, but it was too late.

His son-in-law, the Prince of Orange, who had long been looked to by the Protestants, was invited into England, and having gathered and brought over a large naval force, was cordially received by all classes, even the army deserting and going over to him. James, finding himself deserted by the nation and his own family, was allowed to escape into France, and by his flight was regarded as having abdicated the throne. The succession of James I, King of Scotland, to the throne of England had been followed by the rapidly increasing independence of Parliament. James came as the legal heir to the throne and was recognized as such. The case of William, however, was different; he himself had no hereditary claim, and his wife was not then the heir, because of the birth of a male heir. But the son was not yet entitled to rule because James still lived and had not formally abdicated. The theory of the inheritance of kingly power was for the time definitely set aside. William and Mary had no foundation on which to rest their claims but that of the will of the nation expressed through Parliament. A distinct advance was thus made in recognition of the rights of the Houses of Parliament to represent the nation, and in the statute establishing the coronation oath the supremacy of the law over the king, as well as his subjects, was recognized. The ceremony prescribed required the administration of the oath by an archbishop or bishop in the following form: "The archbishop or bishop shall say, 'Will you solemnly promise and swear to govern

the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same.'

"The king and queen shall say, 'I solemnly promise so to do.'

"Archbishop or bishop, 'Will you to your power, cause law and justice in mercy to be executed in all your judgments?'

"King and Queen, 'I will.'

"Archbishop or bishop, 'Will you to the utmost of your power maintain the laws of God, the true profession of the gospel and the Protestant reformed religion established by law? and will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge all such rights and privileges as by law do or shall appertain unto them or any of them?'

"King and Queen, 'All this I promise to do.'

"After this the king and queen laying his and her hand on the holy gospels shall say, King and Queen, 'The things which I have here before promised I will perform and keep, so help me God.' Then the king and queen shall kiss the book."

As the impulse which placed William and Mary on the throne was mainly a religious one, the early legislation was leveled against the papists and, while test oaths were still required, there was toleration of divergence of opinion among Protestants within certain limits fixed by statute. The people were not yet willing to leave the matter of religion to the free conscience of the individual.

With the accession of William and Mary came no radical change in the theory of government or the system of laws. There was merely an advance toward representative government. The great multitude were still deprived of all right of suffrage as well as of ownership of the soil. The ruling force was still the great landowners and the titled aristocracy. Those who had acquired wealth in the cities were accorded some representation, both in municipal affairs and in the election of members of Parliament, but the poor ignorant laborers everywhere were still excluded from all participation in public affairs and deprived of all facilities for gaining an education.

Privileged classes maintained their complete ascendancy in accordance with a system of laws designed to accomplish that end. Inheritance of lands by the rule of primogeniture preserved great estates in the hands of a landed aristocracy. While the War of the Roses and the barbarities of those times had resulted in the extermination of many of the leading families among which the kingdom had been divided by William the Conqueror, there were still as many titled aristocrats as ever. The king always had power to make them, and increased his own importance by raising his favorites to the peerage, for it has always been true that,

"A king can make a belted knight, a Marquis, Duke and a' that."

The great landholders whether titled or not have generally been the champions of privilege, which must always be synonymous with injustice. In England the landed aristocracy followed no useful employment, but regarded every useful citizen, who labored in any field other than politics, as an inferior. Idling, drinking, gambling, hunting and fighting in the early days, and horse-racing and other sports in later times, have been the principal employments of those favored with the privilege of taking a large share of the products of the labors of others without compensation. A great retinue of servants to do nothing but wait on the lord and magnify his importance, also supported by the labors of others, has always been deemed a mark of greatness. In times when the multitude were too poor to attend schools, wealth afforded a chance for further distinction from education. Some advantage has accrued to the nation from the studies of those who despised labor generally, but probably far less than if the opportunities had been better distributed, for many of the country gentry were too ignorant to read, and drunkenness and debauchery have at all times been more attractive to many of them than the strain of study. No country illustrates better than England the steady potency of that great moral law, which commands man to labor and promises due reward for it. Though for many generations the burden of supporting a vicious aristocracy and a more or less dissolute and pretentious priesthood

had been imposed on the multitude of ignorant and none too industrious or moral laborers, the advancement of England from its barbarism was due entirely to the efforts of artisans, merchants, teachers and other useful people. The idle and dissolute classes, who claimed superiority and enjoyed such extensive privileges, were always an incubus, retarding prosperity and often invoking the dire calamities of war and desolation. That useful activities are the source of all progress is so self-evident that it would seem that all men ought to recognize it from the slightest consideration, yet the strange fact exists that the privileged classes in all countries look down on and despise the useful ones. It was and still is so in England; yet the beginnings of its real prosperity were the introduction of useful arts from the continent, the advancement of knowledge concerning manufactures and trade, the building of ships and sailing to distant lands, and the exchange by the merchants of surplus British products for the surplus products of different sorts from other countries. The manufacturer, the ship builder and the merchant had already done much toward building England, when William and Mary came to the throne, not aided by but in spite of the dissolute aristocracy. Many of the aristocratic families had gone to ruin and poverty as the penalty imposed by nature on idleness, improvidence, debauchery and extravagance, and many great landed estates had already passed into the hands of those who had organized industrial forces and performed truly civilized services in the useful fields of industry and commerce. The ruling force of the nation no longer reposed exclusively in the robber kings and nobles, but the more enterprising and useful classes in the towns had some representation in the house of commons, now rapidly advancing into the position of the dominant political force in the kingdom. It need not be assumed that the motives actuating those employed in gainful callings were so superior. They too often asked and obtained from the kings and Parliament special privileges giving them unmerited advantages. The trade monopolies granted in such numbers by Elizabeth and other sovereigns were as unjust and faulty in principle as the

land monopolies of feudal times, and merchants and manufacturers have at all times been just as willing to receive them. The fundamental superiority however still remained with the industrialists, for no profit could be made without carrying on their useful activities, which were still of some value to the public though coupled with monopoly and extortion. No great reform in the direction of the abolition of privilege was accomplished when William and Mary took the throne, but an advance in the idea of government was made. Instead of a continued recognition of the ownership of the kingdom by the king as his property, the right of the people to choose a king was asserted and exercised. The many centuries of education in the law of land tenure and inheritance, of ecclesiastical tithes and privileges, of titles, preëminences and inherited right to rule, had done their work so well, that no attack was made on any of these, save the king's excessive prerogative.

The principal officers named by William, after he assumed authority, were the members of his privy council, two secretaries of state, privy seal, master of the horse, of the robes, of the ordinance, and twelve judges. Commissioners were named for the treasury, the admiralty and chancery, and to remove doubts as to this procedure an act of Parliament was passed authorizing the appointment of commissioners in lieu of a chancellor. The first act of Parliament in William's reign was one "for removing and preventing all questions and disputes concerning the assembly and sitting of this present parliament," which had not been regularly summoned. William and Mary were not the lawful heirs of the throne. The House of Lords was really the only constitutional body of recognized authority, but King and Commons joining with the Lords in an act of Parliament settled their own authority in a manner which the nation approved and sustained. A long act was passed levying a tax of twelve pence on the pound of annual revenue from lands and other property, and providing a mode for its collection and payment into the exchequer. The last section of this act contained the requirement, that an account should be rendered to the Commons in

Parliament of the use made of the money so levied. This was a new and striking recognition of the authority of the Commons and of the principle that taxes were levied for public purposes rather than as gifts to the king. Another act was passed containing elaborate regulations for the collection of an excise tax on beer, ale and other liquors. The Scotch Parliament also accepted William and Mary and tendered them the Crown of Scotland. In the British Parliament political parties had become arrayed against each other, and the struggle of Whigs and Tories for ascendancy went on in parliament and at the elections for each succeeding parliament. James, having gained the support of France, invaded Ireland, where he received the support of the Catholics but was opposed by the Protestants. James met with such success at first that he was able to summon an Irish Parliament, which, being made up only of his adherents, was of course favorable to his interest. In Scotland he was supported by the Highlanders under the lead of Dundee, who gained a great victory, but lost his life, at Killcrankie. The battle of the Boyne, participated in by William in person, settled the question of supremacy in Ireland, and James again embarked for France, though his adherents continued the struggle for some little time thereafter. The massacre of the Jacobites of Glencoe by William's order evidences his willingness to maintain his authority by the most cruel and bloody deeds. No more cowardly or unwarranted massacre is recorded in history. The position of William as King was not such as that of Henry VIII, holding an undisputed title to the throne, for he held contrary to the theory of hereditary right. He therefore could not safely force Parliament to do his will by arbitrary arrests of recalcitrant members or other methods of coercion. He chose bribery as his system of control. By inviting a Hollander to rule England, Parliament placed on the throne a man far more intent on furthering the interests of his native state than those of England, and in the long and expensive struggle with the French King the resources of Great Britain were used to further the interests of their Dutch rivals, with whom they had been at war so shortly before, or at least what

were supposed to be their interests, for war rarely benefits the masses of the people of any country. By the bribery of members of Parliament of either party, as occasion required, William secured a majority for all his most important demands. The increase of foreign trade afforded new subjects of taxation, and custom duties were charged on all imported goods brought from India and China, and on numerous other articles brought from Europe or other foreign ports. An excuse was found in the necessity for protecting the shipping engaged in foreign trade from the attacks of the French, with whom they were at war. Peace would of course have been a far better protection, but the kings of these great countries did not choose to make peace. The era of trading companies was fairly begun. The East India Company sought, but was not accorded, a monopoly of the eastern trade. In 1692 a corporation named "the company of Merchants of London trading to Greenland" was created by act of Parliament with a stock of at least £40,000. The war with France afforded an excuse for a system of annuities, which were allowed to be purchased from the exchequer by payment of a gross sum to be used up in the war. The principal business of Parliament was still that of imposing burdens of taxation and calling out soldiers, sailors and mariners for the great war with France. The old parliaments had mainly followed the pay as you go system, but it was now found that by means of loans and annuities the money might be raised for immediate use and the burden of payment postponed. In 1694 Parliament passed "An act for granting to their majesties several rates and duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompenses and advantages in said act mentioned, to such persons as shall voluntarily advance the sum of £1,500,000 toward the carrying on the war against France," by which certain taxes were levied, and provision was made for the incorporation of the Bank of England with a capital stock of £1,200,000. The leading purposes of Parliament in this act were to facilitate raising a loan for the war and at the same time furnish a desirable investment for subscribers to the stock. The act expressly allows members of Parliament to be stockholders. In this

manner a new form of combination was established, by which the government of England entered into a combination with certain citizens to carry on the business of banking and conduct the financial operations of the government. The idea was not new, as similar institutions existed in Italy and Holland. By a subsequent act provision was made for enlarging the capital stock of the bank, with many long and complicated provisions difficult to summarize. In 1698 a new rival East India Company was incorporated with exclusive privilege of trade to the East Indies, reserving a right to the old company to continue until Sept. 29, 1701. The two afterward consolidated during this reign. Another great company was chartered for the African trade. An inspection of the many acts relating to trade discloses the great attention it received and the efforts of individuals and companies to gain advantages by restrictive legislation, tending to secure to them either a complete monopoly of some branch of trade or some undue advantage in it. Sometimes the act took the form of an out and out monopoly as in the trade to India, sometimes by preventing the importation of foreign goods in competition with domestic, and again by prohibition of the exportation of raw materials like wool, hides, etc. Occasionally acts are found abolishing some special privilege, against which there was an outcry, but in more instances the motive of the law was to confer a special advantage on some favored ones. The corruption of the members of Parliament is much condemned by historians, as also is the system followed by William of carrying his measures by bribing members with money or by appointing leading ones to office. In considering the moral turpitude of these acts they should be compared with preceding rather than subsequent conditions. The idea of treating moneys voted to the king as merely trust funds to be used for the public good, had its beginning only in the reign of Charles II. Elizabeth did as she liked with the funds granted her. She bestowed public land or money on whomsoever she pleased, for service or out of mere favor, and scorned to account to anyone for it. Under William the trust fund theory had gained firm hold on the public, and the practice was

adopted of raising money by taxation and at the same time making express provision for its application. It had been started under James I but did not become a settled system till the reign of William. The fact that questions of this sort could be and were freely discussed, of itself evidences a marked advance in the public comprehension of the limitations of authority and the legitimate purposes of government. Though William obtained larger contributions than any of his predecessors, he took them under greater restrictions. Parliament had become the ruling force, and the king's prerogative had been greatly reduced. The policy adopted by him of changing his chief ministers in such manner as to have men in accord with the party majority in Parliament, though started as a mere expedient to accomplish his own ends, was the foundation on which ministerial accountability was built, which in time took substantially all power out of the hands of the king and vested it in the ministry, as representatives of the party having a majority in Parliament. The ruling class was divided into Whigs and Tories, and party strife became very intense. The real power of the kingdom was in the landed aristocracy and the men who had gained wealth by trade and other enterprises. The great multitude were still ignorant and poor and allowed neither a share of the face of the earth or of the accumulated knowledge of the past, nor were they given any voice in the government.

The adherence of the Irish people to the Roman church and to King James afforded an excuse for the confiscation of the greater part of the lands of the island, and was the starting point of that great system, through which a title to the soil of Ireland was vested in certain English favorites, to whom it was sold at a low price or given as a mere matter of favor; thereby placing all the native population dwelling on it at the mercy of foreign owners, who have often exhibited little or no regard for the rights or welfare of their tenants. Nowhere are the workings of theories of hereditary ownership of land, disconnected from occupancy, better illustrated than in the case of these Irish estates. Through the accident of birth the heirs of these first proprietors, who got a paper title

to vast estates without giving an equivalent, have from generation to generation been protected by the law, the courts and the army in whatever measures of oppression and extortion they have seen fit to adopt and enforce on the generations of native people born on the land. Nowhere else is the utter want of moral foundation for such a legal theory and system more strikingly exhibited. The tiller of the soil, who alone has done anything to make it produce, has often starved, while the crops he has raised have gone merely to gratify the pride and minister to the luxurious living of distant favorites of the law, who have done no service meriting any return whatever. Thus mere accident of birth is by law made the highest merit and given the greatest reward. The same system prevailed in England with the modification, that in most instances the owners lived on their estates more or less of the time and squandered their revenues on servants about them and neighboring tradesmen, while all was taken away from Ireland. The making of the laws was still quite as much in the hands of those favored by this system, after the House of Commons came to be a leading factor in the government, as before. The great landowners and men of great wealth chose the members, mostly from among their own number. Nevertheless real reform went on, the method of administering a fundamentally unjust system of laws was considerably improved. Procedure was gradually made a little less technical; sheriffs, bailiffs and other court officials were held to a mere strict performance of duty; contracts and such rights as the law gave were better enforced. Above all freedom to perceive the truth in relation to any matter and to express it steadily came to be regarded as less dangerous to the good order of society. The great educational process, through which errors are detected and discarded, was going on among the people, and the contentions of political parties and religious factions caused a continual challenging of the basis of claims of privilege and authority.

The essential division of the powers of state in England as subsequently maintained fairly dates from the reign of William and Mary. The House of Commons, as the direct rep-

representative of the ruling class in the nation, was the leading force, the House of Lords held second place as a law-making body, the King was still the executive head, but required to act through ministers accountable to Parliament. The judges were liberated from the dictation of the king by holding tenure of office during good behavior, and subject to removal only by Parliament. In the act regulating the succession to the Crown, Ch. 2-12 and 13, William III, it is provided that no person to whom the crown shall pass shall engage in any war for the defense of any territory not belonging to the crown of England without the consent of Parliament, nor shall he go out of the three islands without such consent; that resolutions of the privy council shall be signed by such of the members as consent thereto; that no foreigner shall be made a privy councillor; that no officer or pensioner holding under the king should serve in the House of Commons; that judges should hold office "*quamdiu se bene gesserint*" with salaries ascertained and established; and that the law-making power shall rest in the king and two houses of parliament. These provisions, though not so often mentioned as the Magna Charta, were of far more real importance, in that they balanced power against power and made one arm of the government a check on the abuses of another, and especially because they effectually curbed the arbitrary power of the king.

On the death of William in 1701, Anne, Princess of Denmark, though not the heir in the regular order of succession, was proclaimed Queen; Charles being excluded on account of religion and she having been declared the next in the Protestant line. Among her first acts was a declaration of war against France, which continued until a treaty of peace was concluded at Utrecht in 1713. Many great battles were fought and great victories won under the leadership of the renowned Marlborough in the low countries, Germany, Spain and Portugal, but the main result of the war was vast expense, much bloodshed and misery. At the conclusion of peace England gained territory in America, which she has ever since retained. The public debt, which at the revolution in 1689 was £664,263 grew under William to £16,394,702 to which Anne added

£37,750,661 more, notwithstanding unusually liberal grants of revenue during both reigns. The wars and the voyages of the sailors were valuable in an educational way by bringing Englishmen in contact with the people of other countries and teaching them the geography, products and arts of other lands. The discovery of America and the opening of eastern trade had introduced many articles of food, clothing, etc., which had been unknown to Europeans before. Potatoes, maize and tobacco from America, spices, tea, coffee and eastern manufactures, had become important articles of commerce. While war went on the struggle for wealth continued and the spirit of adventure grew. The most valuable achievement of the reign of Anne was the union of Scotland with England, which was brought about by a treaty framed by commissioners appointed by the queen for each nation under authority of their respective parliaments. The leading features of the treaty were, that the crown of the united kingdom of Great Britain should be vested in the Princess Sophia and her heirs, as had been before settled by act of the English Parliament; that the United Kingdom should be governed by a single Parliament; that the subjects of each country should have equal privileges and share the public burdens under certain adjustments of customs and excise provided for; that the coin of Scotland should be made the same as that of England; that the laws concerning public rights, policy and civil government should be the same throughout the united kingdom, but that no alteration should be made which concerned private rights, except for evident utility of the subjects in Scotland; that the courts in Scotland should remain as before, subject to such regulations as Parliament might thereafter make; that heritable offices in Scotland should continue to the owners as property; that Scotland should be represented in Parliament by sixteen peers and forty-five commoners, to be elected in such manner as the then existing Scotch Parliament should provide; that Scotch peers should rank next after English and before those thereafter created, but should not be allowed to sit in Parliament unless chosen as provided. This treaty was ratified by the parliaments of both countries, though not without oppo-

sition, and on Oct. 23, 1707, the first British Parliament assembled at Westminster. The genius for organization, adventure and speculation continued to manifest itself among the people, and in 1711 the famous South Sea Company was incorporated with a monopoly of trade to the South Seas. The charter was granted to persons holding navy bills, debentures and other public securities. Although the reign of Anne was burdened with the moral reproach of a long continued and exhausting continental war, it stands greatly to her credit that no subject's blood was shed for a charge of treason.

On her death in 1714 the elector of Hanover was proclaimed King under the name of George I. He began his reign by dismissing the Tory officials and selecting Whigs. The adherents of the pretender, as he was styled, raised a revolt with considerable head in Scotland, but were crushed without much difficulty. The barbarous spirit again manifested itself in prosecutions for treason, both by impeachment and trials in the courts, and many persons were executed with customary barbarities of hanging, drawing and quartering, while others in large numbers were transported over the seas. As usual the martyrs included in their numbers some of the best men of the time. The desire for the fruits of the labors of others was still active among those near the throne, but the old method of seizing great estates and forcing the occupants to labor for the possessor had largely given way to newer and more refined methods of using the governing power for the benefit of the favored few. The public debt, incurred in foreign wars, had become the basis of the formation of great companies, which were given the countenance and support of the government in return for loans of money on public securities. Public revenues became payable to such corporations for interest on the public debt, and the people were induced to take their stocks on the faith of the support of the government and of the power and influence of the boards of directors, in which were included many of the leading men of the kingdom. The greatest of such corporations were the Bank of England, the East India Company and the South Sea

Company. Among others of less note were the Royal Assurance and London-Assurance companies. About 1720 the managers of the South Sea Company succeeded in arousing a spirit of wild speculation in its stocks. It had become the holder of a large part of the public debt, and through the arts of its managers came to be regarded as a source of unlimited profit. The craze became so great that £100 shares sold as high as £1,000 without any substantial reason for such a valuation. Other speculative corporations, projected to carry out more or less useful purposes, were formed in great number. The spirit of speculation took possession of great numbers of all classes and callings, and the most shrewd and unscrupulous for a brief time gained enormous profits, not from the fruits of legitimate business ventures, but from the sale of stocks in these corporations. Industry was abandoned by many and luxurious living and the vices, crimes and follies peculiar to the rich became prevalent. But prices of shares could not be advanced forever. When they began to fall, people awoke from their dreams to see the true character of the scheme in which their money was invested, and the inevitable crash and misery followed. Parliament acted with a vigor and effectiveness seldom exhibited there or elsewhere. An investigation was ordered through a committee, which discovered the gigantic frauds of the directors and their friends, who were required to disgorge their ill-gotten gains for the satisfaction of the defrauded stockholders. The tedious processes of the courts were dispensed with, the directors were required by Parliament to bring in inventories of their estates and an act was passed confiscating them to make good the damages resulting from their frauds. The practice of bribing members of Parliament to carry the king's measures through continued, and large sums were required to be raised by taxation to pay pensions and bribes given by the king. The principal business of Parliament continued to be to grant the king supplies of men and money for foreign wars, either entered on or threatened. The nation was both warlike and eager for gain. Foreign affairs had come to be a matter of great concern to the merchants, who found that in many in-

stances wars were destructive of their profits, while in others they imagined that their interests could be promoted by force. The division into Whigs and Tories and the constant presence in Parliament of a minority opposed to the ministry, caused public discussion of matters of interest, the discovery of the truth and adoption of an advanced moral standard. Though each party was violent and unscrupulous in its attacks on the other, the people judged between them, and a very small minority were influenced mainly by the truth. The multitude followed their blind prejudices most of the time. George, though not a man of either great ability or high moral purposes, maintained his power and was exceptionally successful in obtaining the support of his Parliaments.

The reign of George II was similar in main to that of his father. There were the same political parties and corruption. The government was still looked to by that class of crafty men, who everywhere surround the ruling force, as a means of obtaining wealth without meritorious service. Pensions were paid to favorites out of money collected by taxation, and the most venal and undeserving of men were rewarded with incomes they did nothing to earn. In the efforts to gain party advantage moral principles were appealed to to condemn adversaries, and though the evil practices continued, the public slowly gained some perception of the true principles of government. On the whole the reigns of the first three Georges were periods of increased power in the king and his ministers, though maintained by corrupt practices rather than by general acknowledgment of prerogatives. The morals of the people in the times of George I and George II are said to have been very low, but commerce and industries continued to expand. The impulses that pushed civilization forward came from active brains employed in useful callings, rather than from those more prominent persons, who in the king's councils or in Parliament merely sought wealth they did not earn and power to do evil. Under the Georges it is difficult to detect much of use to the public in the functions of government. The courts, though considerably improved, through greater independence of royal favor, were still prin-

cipally employed in enforcing the privileges of the landed aristocracy, the demands of monopolists and other favorites of the government and the barbarous punishment of persons charged with crimes. Of the sums raised by taxation war took the major part, court favorites came next, and roads, bridges and public works a comparatively insignificant part. Foreign trade grew, rather in spite of governmental restrictions and burdens than because of its fostering care and protection. The enterprise of the merchant constantly found ways of utilizing the wealth of the distant quarters of the globe, notwithstanding the trade monopolies and the taxation imposed for the benefit of favored persons. The real progressive Britain was in the merchants' counting rooms, the factories abroad, the industrial establishments, on the sea, and among the truth seekers, who by speech and writing condemned the immoralities of the age. Though the king and his ministers continued to bribe members of Parliament to vote for their tax bills, the established system of inquiring into the use made of public money tended to check inordinate expenditure and to repeatedly call public attention to the fact that the money raised by taxation was mostly worse than wasted. The system of administration through a ministry accountable to Parliament was still in a tentative stage. The king claimed the right to choose his ministers and many supported his claim. The accountability of the ministry was essential to any effectual check on the king's conduct of the government, for the king himself could only be reached by revolution. It is a strange circumstance that in a country so far removed from Rome, by geographical position, by race, and yet more by the peculiar spirit of its institutions, the Latin language should have been so long used in the courts. It was not till 1731 that a bill was passed providing that thereafter all pleadings and processes should be in the English language. The Seven Years' war from 1756 to 1763, which involved not only the rival kingdoms of England and France, but also Austria, Russia and the rising power of Prussia, was known on its American side as the French and Indian War and invoked a cruel and bitter war between the colonists of the

respective countries in America and India. The result on sea and land was exceedingly favorable to British supremacy. In America Canada became and has ever since remained a British possession and in India the French were overpowered and British ascendancy established. At sea British naval victories made England the first naval power of the world. To its mastery of the ocean Great Britain mainly owes its wealth and power. The surplus products of all lands are floated to its harbors for the use of its people. The expenses incurred in the war in America led to the question as to the share to be paid by the colonies and the method of imposing taxes on them.

The right to regulate the commerce of the colonies and all foreign possessions had always been claimed and exercised by Parliament, and was not seriously questioned, though the burden of the restrictions on exchanges in the most favorable markets was felt to be very heavy. In 1764 by Ch. 15, acts of 4 George III duties were imposed on various articles imported into the American colonies from Great Britain; on white sugar £1 2s. per one hundred pounds in addition to the duties imposed by former acts. On indigo 6d. per pound, coffee £2 19s. 9d. per one hundred pounds. Calico made in Persia, China or India and imported from Great Britain 2s. 6d. per piece of ten yards or less. Like duties were imposed on wines, silks and other cotton stuffs. The same act contains a prohibition on the importation of sugar into Ireland except from Great Britain and many elaborate provisions designed to secure to British merchants a monopoly of trade with the American colonies. Among other acts passed at the same session of Parliament was one giving a bounty on hemp and undressed flax imported from America; one permitting the exportation of rice from South Carolina subject to duty, and another prohibiting bills of credit issued in the colonies from being made a legal tender. All these acts were acquiesced in as the exercise of legitimate power. At the next session held in 1765, Parliament passed an act which met with a different reception. It is published as Ch. 12-5 George III and imposed stamp taxes, not only on all paper and parch-

ment used in legal proceedings in all the different courts in the colonies, or on which were written wills, deeds, contracts or bills of sale, but also pamphlets, advertisements, almanacs and many other publications. A tax of £10 was imposed on the parchment on which a lawyer's license to practice was written. Courts were prohibited from receiving in evidence any paper not duly stamped, and a penalty of £10 was imposed on any person executing an instrument without causing it to be stamped. The act was very long (twenty-four pages), and minute in its regulations. It provided for commissioners to sell the stamps and enforce their use. Unlike the duties on imports and exports these stamp taxes called for a direct contribution from each citizen, when it became necessary for him to use paper or parchment for almost any purpose, and the act was such an assertion of the sovereignty of Parliament as to challenge the attention of the people. Nothing could better exhibit the lack of understanding on the part of British statesmen of the spirit of the colonists, than the passage of so vexatious an act to be enforced on the liberty loving Americans. The ministry soon learned their mistake and found how utterly impracticable it was to enforce the law. In the next session of Parliament, held in the same year, Ch. 11-5 George III repealed the whole act, but this was most unwisely followed by Ch. 12, entitled "An act for the better securing the dependency of His Majesty's dominions in America upon the Crown and Parliament of Great Britain," which is sometimes called the declaratory act; in which it was provided "That the said colonies and plantations in America have been, are and of right ought to be subordinate unto and dependent upon the imperial crown and Parliament of Great Britain, and the King's majesty by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain, in Parliament assembled, had, hath and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America subjects of the crown of Great Britain in all cases whatsoever," and that all acts of colonial legislatures to the contrary are void. Though the vexatious stamp act had been

repealed, this act asserted the power of parliament to reimpose it or enact any other law or impose any other tax it might see fit. The colonists denied this power, because they were not represented in parliament. They asserted that taxes were grants made by the taxpayers through their chosen representatives to the king, and that this was a fundamental principle of the British constitution. At the same session of Parliament certain duties were removed. At the next session Ch. 46-7th George III was passed imposing duties on a few articles imported into the colonies. On white or red lead 2s. per one hundred pounds. Tea 3d. per pound. Glass, clear or white 4s. 8d. per one hundred pounds, green 1s. 2d. per one hundred pounds, paper of different grades at various rates.

The attention of the colonists having been aroused to the principle of taxation, even this mild measure was stubbornly resisted. The attempt to compel obedience to parliamentary authority by force was met by force. France and Spain seized the opportunity of the revolt of the colonies to cripple an hereditary foe and joined their forces against Great Britain. The result was the loss of the most valuable possessions of the British nation. The ideas of government entertained by the colonists were largely those prevailing in England in the time of Cromwell. The reaction which had ensued in England had not been felt to such an extent in America, where there was no distinctly aristocratic element of society. The adoption by the colonies of a republican form of government had no marked influence on British institutions. The laws of England, except as modified by legislative action, were adopted by the colonies, and the theories of government were generally the same, except as to the hereditary king and nobility. When the French revolution came, England was not affected as were the countries of continental Europe. Through its Parliament the nation had representation in the government, and there was a peaceable method for reforming the evils of government. The judiciary also was far more independent and enjoyed in a much higher degree the confidence of the people than in continental states. Above all much greater freedom of speech and of business combination and

enterprise was allowed in Great Britain than on the continent. In Parliament members were accustomed to freely express their views on all public matters, and pamphleteers made attacks in print on whatever they saw fit. This measure of liberty the ruling power of Great Britain, which now rested in the great landholders and capitalists, accorded to the masses. The descendants and successors of the ancient feudal barons still claimed most of the face of the country, which they held by descent or purchase in large tracts, but they were no longer the only wealthy class. Trade, industries and speculation had produced another wealthy and more active class, who gained seats in Parliament and often added to their wealth by special acts in the interest of themselves and their associates. Parliament had always been an aristocratic body. Ch. 20, 33, George II, enforcing the act of 9th Anne, required members of the House of Commons to swear that they were qualified to sit for the places for which they were returned. If elected as a knight of the shire, the member must have £600 a year income from lands, if a citizen, burgess or baron of the cinque ports £300. All the forces of a government thus constituted were arrayed against the principles of the great National Assembly of France, which proclaimed liberty, equality and fraternity. Some liberties the English people had long enjoyed, which were unknown in France and Continental Europe generally, but equality and fraternity were utterly repulsive and abhorrent to those who not only conducted the British government but also shaped public sentiment. The general effect in England of the French revolution was to strengthen the hands of the aristocratic element and to place the country in an attitude of intense hostility to French revolutionary ideas and to the French nation. Throughout the long struggle which ensued, England, the most liberal and progressive of the great European states during the preceding century, took its dogged stand as the most conservative and bitter foe to French liberty. For the long and destructive wars which devastated Europe and caused so much good blood to be poured out on the great battlefields, England is justly chargeable with

a large measure of responsibility. From that war the English people suffered far less than those of the continental states, over which the great armies under Napoleon and the combined forces of his foes fought. To the sea and the British navy the people of the isles owed security from invasion. British armies fought on the continent, and many good men were slaughtered in distant lands; but war's desolation on English soil was avoided. The policy of increasing the navy had been pushed with such success that, long before the final overthrow of Napoleon, the French fleets were destroyed and Great Britain was master of the seas. In 1800 the Irish Parliament, which was not much of a representative of the Irish people, consented to a union with Great Britain with a representation in the British Parliament of four lords spiritual, twenty-eight lords temporal, elected by the Irish peers for life, and one hundred members of the House of Commons. The semblance of Irish nationality disappeared with the termination of the Irish Parliament. This followed a rebellion, which had been crushed and punished with great barbarity, chargeable in some measure to religious prejudice and the bitter hatred existing between the Protestant Orangemen and the Catholics. Throughout all time it has been a part of the trade of rulers, civil, military and ecclesiastical, to claim the credit of all advancement in material interest of the nation, and to attribute all calamities and misfortunes of the people to their refusal to follow the guidance of the constituted authorities. During the long reign of George III the rulers provoked the disastrous war, which resulted in the independence of the American colonies. They also engaged in the long and bloody struggle carried on to crush the political truths promulgated by the leaders of the French revolution. Numberless good men were sacrificed in the strife, and a vast national debt was incurred which, though somewhat reduced, still burdens the English people. By the American war £121,267,993 was added to the principal of the debt and £601,500,343 during the French war. These items stand charged in the account against the rulers. There were other heads at work in the na-

tion, which wrought out far different results. In 1763 Wedgwood established the great Staffordshire potteries, in 1767 Hargreaves brought out the spinning jenny, and Compton's mule was finished in 1779. Cartwright conceived the idea of the power loom, and Watt's steam engine was made in 1768. Through these great aids to human effort the English people were greatly benefited, the productiveness of their labors multiplied, and industries and trade powerfully stimulated. In 1776 Adam Smith published his *Wealth of Nations*, in which he attacked the narrow, selfish policy of the government with respect to trade, and exhibited in its true light the manifold benefits of free and unrestricted exchange of products. The lessons he taught were not learned and digested sufficiently to be utilized till more than half a century had elapsed, but the time came when England profited immensely from the freedom of her ports. In 1815 the landholding aristocracy, true to their inherited narrow selfishness, obtained the passage of a law prohibiting the importation of corn till the price was above 80s. a quarter. With the growth of manufacturing interests came an ever increasing demand for a larger measure of political influence and better compensation for the mechanics and laborers. The great manufacturing towns of Birmingham and Manchester were without representation in Parliament. The laboring classes were no longer willing to be treated as of no importance, but the ruling classes resisted their demands and resorted to force to repress them. A great meeting having been called at Manchester in 1819, an attempt was made to arrest a popular speaker, followed by a charge of cavalry on the multitude, the killing of six persons and wounding of a far larger number. Free speech among those who have real grievances to complain of is always dangerous to those who profit from the wrongs, and in this case an effort was made to suppress it by force. The effect of the cruel slaughter was to further the cause of the laborers far more than any agitator's speech could have done.

In the reign of George III there was a remarkable increase in parliamentary activity. Long acts were passed on

a great variety of subjects, though with but a faint manifestation of a desire for justice. By Ch. 25-24, George III, the King was empowered to name six commissioners for the affairs of India, with power to superintend and control the civil and military government of the East Indies. The details of the government, however, were still left with the directors of the East India Company. This system of government by a corporation organized for profit had grown up and developed with the aid of the military power of Great Britain. The profits of the company were derived partly from trade and partly from taxation of the natives in various forms. The great British Empire of the East was started by the agents of a corporation, the primary purpose of which was to make money. The exercise of political and governmental powers grew as it was discovered that they could be wielded profitably. By the act above mentioned the British government assumed some powers of supervision, through the courts as well as the commission, over the affairs of the natives and the company. In the published statutes at large the acts of the reign of Edward I, called the great law-giver, cover 258 pages: those of Elizabeth's reign of forty-five years 413 pages, while in the sixty years of George III thirty-seven volumes, many of them of large size, were required to contain the acts of Parliament. It might be thought that so much legislation would result in radical changes of the system of laws, but it was not so. A very large portion of the space filled is taken up with tax bills, regulations of the excise, duties on imports and exports, land, income and other taxes, and directions as to the use of public moneys in repairing roads, bridges, harbors, etc. There are acts in great number designed to regulate, encourage or restrict various lines of trade and manufacture which have been repealed, renewed and amended to meet the changing views of Parliament or to favor the men or party in power at the time. It may occasion surprise to find how much has been attempted and how little accomplished by the many laws designed to affect trade and manufacturers. Real improvement in the laws came through the repeal of restrictive acts. Freedom in

commercial enterprise has stimulated trade and industry far more than any or all the laws designed to direct or encourage them. During the reigns of George III and George IV there was little regard paid by Parliament to the interests of the toiling multitude. The landed and moneyed classes were alone considered, though near the close of the reign of George IV there were growing demands for an extension of the elective franchise. The extreme selfishness and wanton cruelty of the ruling class is well illustrated by 9 Geo. 1 ch. 22 and 31 George II, ch. 42, which made it a felony, punishable with death, to break down the mound of a fish pond whereby any fish shall escape, or to cut down a cherry tree in an orchard. The indolent, cruel and selfish aristocracy did not hesitate to take the lives of the poor for so slight an interference with the unmerited privileges, which the law conferred on them by their exclusive license to fish and hunt and their artificial claims to the ownership of the face of the earth.

With the decay of the feudal system and the growth of the power of Parliament came increased severity in the laws relating to the punishment of crimes. In the early years the death penalty was never inflicted by the public authority, but only by the relatives of the murdered man in cases of homicide. Coke mentions only seven capital felonies, homicide, rape, burglary, arson, robbery, theft and mayhem. All these were originally subject to benefit of clergy, which in those times meant that the secular courts had no power to punish churchmen, and the church did not inflict the death penalty, but sought to purge and reform the offender. The privileges of the clergy began to be first reduced in the time of Henry VII, being taken away in cases of petty treason committed in the murder of a master. Under Henry VIII they were further restricted, and finally in 1827 by Sec. 6 Ch. 28-7- and 8 George IV, benefit of clergy was abolished, and by Sec. 7 the penalty was taken away, except in cases excluded from benefit of clergy or made capital by some subsequent act. Blackstone says (4 Com. 18) that, "among the variety of actions which men are daily liable to commit, no

less than one hundred and sixty have been declared by Act of Parliament to be felonies without benefit of clergy." This may possibly give an exaggerated idea of the number of capital offenses, for many particular offenses were made capital by Act of Parliament, which might naturally have been included under some general head. Ch. 27-9 George I, known as the Black Act, provided that if any persons armed or having their faces blacked or being otherwise disguised, should appear in any forest, etc., or in any warren or place where hares or rabbits were usually kept, or in any high road, open heath, common or down, or should unlawfully or wilfully hunt, wound, kill, destroy or steal any red or fallow deer, etc., they should be guilty of felony without benefit of clergy. This statute Stephens, in his *History of the Criminal Law in England*, says creates fifty-four capital offenses, yet it cannot be regarded as doing more than make it a felony to trespass on any game preserve. This act discloses very pointedly the cruel severity of the gentry of England, who to gratify their passion for slaughtering game made it a deadly offense for a poor man, really in need of it for food, to even go where he might get it, notwithstanding that by nature one man has as much right to take game as another. Most of the severe penal statutes were designed to protect the king, the nobility and the great landowners in that to which the law gave them an artificial claim. Treason, which was merely denial or resistance of the claimed right to rule, was most jealously ferreted out and cruelly punished. At the end of the seventeenth century of the crimes designated as felonies without benefit of clergy, there were high treason, petty treason, piracy, murder, arson, burglary, housebreaking and putting in fear, highway robbery, horse stealing, sheep stealing of a value above 1s. stealing from a person of above the value of 1s; rape and abduction with intent to marry. The whole course of the legislation of the eighteenth century tended to increase rather than diminish the severity of punishments, and no other country prescribed the penalty of death for so many petty offenses as Great Britain during that time. It is a noticeable fact also that a very large part of the

crimes are such as the unmerited privileges of the aristocracy invited. In acts passed in 1827, 1828 and 1830 the death penalty was still prescribed for robbery by force or threats to accuse of an infamous crime, sacrilege, burglary, housebreaking and stealing or putting any person in the house in fear, theft of £5 in a dwelling, stealing horses, sheep or cattle, arson, riotously demolishing houses, destroying ships, exhibiting false signals, murder, attempts to murder by poisoning, stabbing, shooting, etc., administering poison to procure abortion, sodomy, rape, connection with a girl under ten years old; forging the great seal, public securities, wills, bills of exchange or promissory notes; making false entries in certain public books of account, and forging transfers of stocks. This is a strange list of capital penalties to be inflicted by a Christian nation in the nineteenth century. Since then it is gratifying to note that the course of legislation has been steadily in the direction of repealing these savage penalties, until now only the crimes of treason, murder, piracy with violence, and arson of dockyards or arsenals are punishable with death.

The growing spirit of humanity was further evidenced by the acts 3 and 4 William IV, ch. 73 and 5 and 6 William IV, ch. 45 abolishing slavery in the British colonies and providing payment to the masters. Doubtless certain private interests were promoted by the large expenditure of public money in payment for the liberated slaves, but the general purpose and effect of the acts were good. The slaves were first converted into apprentices and liberated after a prescribed term of service as such, not to extend beyond Aug. 1, 1840. Hours of labor were limited to fifty-five in one week. By ch. forty-five 2 William IV, many important reforms in the constitution of the House of Commons were effected. Boroughs with very few inhabitants, which had theretofore had representation, were deprived of it, and the great manufacturing towns of Manchester, Leeds, Birmingham, Greenwich, Sheffield and others of importance, which theretofore had been without representation, were accorded two members each, and others of less importance one each.

The elective franchise in the counties was extended to all adult male freeholders, including copyholders having lands of the clear yearly value of £10, and also to certain tenants for years of lands yielding £10 net above the rent reserved. In the boroughs persons occupying as owners or tenants houses of the rental value of £10 per year were allowed to vote for members of Parliament. The overseers of the poor were made registration officers and required to prepare lists of voters in the respective counties and boroughs, which were subject to revision by barristers named by the judges of the King's Bench. The expenses of the polling booths, deputies and clerks in charge of the election were required to be paid by the candidates, a provision which would be deemed very objectionable in the United States. In 1835 an act was passed as Ch. 76-5 and 6 William IV, entitled "An act to provide for the Regulation of Municipal Corporations in England and Wales," by which a general system of municipal organization in substantially all principal cities and towns except London was substituted for the special charters under which they had been governed theretofore. The franchise for the election of municipal officers was extended to all adult males, who should have occupied a house for the three preceding years and been rated and have paid rates for the relief of the poor during such time. The municipal government was placed under the control of a mayor, alderman and councillors. The councillors were elected by the burgesses by signed ballots, and from their number the aldermen were chosen by the councillors. One-third of the councillors were to be chosen annually and half the aldermen every three years. The mayor, aldermen, and councillors constituted the council, and the council chose a mayor annually. The election of councillors took place in November, and in March two auditors and two assessors were chosen. The council had supervision of the public property of the city and charge of police affairs. Though the elective franchise was greatly extended, a property qualification of £500 was required for members of the council, and occupancy of land and payment of rates was the basis of the qualification of voters.

It would be hard to imagine a law more unjust in principle than that by which taxes were imposed on the importation of food into a country usually requiring more than the home product. The effect of such taxation is necessarily to raise the price of all kinds of food so taxed, whether of domestic or foreign production. As Parliament was dominated by the great landowners, who were interested in keeping the price of grain as high as possible, it had long been the policy of Great Britain to collect a protective duty on imported grain. In 1846 after a great contest at the elections over this system, resulting in a majority favorable to its continuance, a famine in Ireland and great scarcity of food in Great Britain caused the ministry to propose and carry through a repeal of the tax. The justice and good policy of freedom in the purchase of food has been so obvious and the good effects of this repeal so generally appreciated, that Great Britain has steadily pursued a policy of throwing off restrictions on trade ever since. The Sepoy rebellion in India in 1857, which was suppressed with much bloodshed and barbarity, led to the assumption by the government of more direct rulership in India.

In 1861 by Ch. 67, 24 and 25 Vict. the government of India was vested in the Governor General and a Council, consisting of five ordinary members, three of whom were to be appointed by the Secretary of State for India in Council with the concurrence of a majority of the members present at the meeting from persons who had been in the service in India of the crown or company and crown for at least ten years, and the remaining two by the Queen, one of whom should be a Scotch barrister of five years standing, and the commander-in-chief in India might be added by the Secretary of State as an extraordinary member. When the council assembled in the Presidencies of Fort St. George or Bombay, the governor of the presidency became an extraordinary member, and when in the other provinces having a Lieutenant Governor, he also became an additional councillor for the purpose of making laws. The Governor General was also vested with power to appoint extraordinary members of the council for the purpose only of making laws, not less than six nor

more than twelve in number, one half at least of whom should be non-official persons and hold for two years. The Governor General was given power to fix the times and places of meetings of the council and to make rules for the conduct of business. He might assent to laws or refer them to the crown, but no law took effect without the assent of the Governor General or the Queen, and the Queen might disapprove of a law assented to by him and annul it. The legislative power so conferred was full and complete as to all matters except those covered by certain acts of parliament. Similar councils were provided for in the presidencies, to be presided over by the governors. Laws enacted by them were subject to the approval of the Governor General and might also be annulled by the Queen. The laws so made were operative only in the presidency for which enacted. In 1873 provision was made for winding up the affairs of the East India Company by Ch. 17-36 Vict. and for payment of the stockholders, whose stock was rated in the act as worth £200 for every £100 face. In this manner was terminated a most remarkable form of combination of private interests and governmental powers, and the government undertook the task of supervising the distribution among the stockholders of the proceeds of the great private enterprise, which had resulted in subjecting the vast empire of India with its hundreds of millions of people to the crown of Great Britain. For some generations it has been the claim and especial pride of Englishmen, that theirs was a government of laws, established by a representative Parliament or immemorial custom and administered by able and upright judges. Probably more power has been exercised by the courts, and their influence has been more general in England than elsewhere from remote times. The common law of England, which can only be found authoritatively stated in the decisions of the courts, has been often lauded, especially by the legal profession, and sometimes mentioned as the perfection of human reason. The courts have enjoyed the profound respect of the people generally, and the righteousness of their decisions has seldom been publicly questioned. Certain it is that there until recent times, the

people relied more on the courts for the enforcement of their claims of right, and that questions of law were given more consideration and weight than in the countries of continental Europe. It cannot be denied that judicial functions have been exercised by many able men in England for several centuries, and that a desire to do justice has been often manifested by them, but the genius of the whole system has required steady adherence to precedent and denied the judges liberty to do justice in cases where it has not been the custom to allow it. The fundamental purpose in early times was the enforcement of the privileges of the landed aristocracy, and later on of the clergy also. Though at first the barons maintained their dominion over the people by force of arms under a theory of ownership of the soil, and the clergy obtained their revenues partly through land tenure and partly through enforced contributions, the courts, acting in accordance with a fixed set of rules, were found convenient instruments for holding the poor in subjection and settling disputes between the privileged classes without bloodshed. The ideas on which the ancient landed nobility based their ascendancy still prevail, so far as the theory of land titles is concerned, and the claims of the clergy to compulsory support by the people are still recognized in a modified form. The liberalizing influences, which step by step have advanced moral standards, have come mainly from the industrial classes and those engaged in legitimate enterprises for gaining wealth. Nowhere else, except perhaps in Holland, has there been such a general disposition to make foreign investments and promote new enterprises for profit. In the early explorations by sea all classes took part, and ever since then there have always been opportunities for men of ability in any social rank to gain wealth, and having acquired it to receive protection in its possession from the courts. Though using the most clumsy and inconvenient system of money, weights and measures, the British nation has always had a remarkable genius for computation of values and profits, and as an aid to such computations to gather statistics and information of all kinds. This propensity for gathering information, coupled with adherence to precedent and a pro-

found respect for everything British, has led to some peculiar results. The money center of the world has a barbarous, inconvenient and uncouth system of accounts, using pounds, shillings, pence and farthings to express values and sums of money, and the greatest commercial nation on earth uses units of measurements and quantities quite incomprehensible to many people instead of the decimal metric system in use on the continent. The country where courts were most regarded and resorted to, for centuries had a system of courts and methods of procedure in the disposition of causes so intricate and complicated, that a suitor could seldom tell to what court he should apply for relief nor, having chosen his court, could he safely rely on the ability of his lawyer to follow intricate legal forms and get to a decision of the case on its merits. There were ecclesiastical courts, lay courts, local courts of special limited and peculiar jurisdiction, admiralty, exchequer, probate, bankruptcy and other courts dealing with special subjects; then there was the great division into law and equity with power in the latter, in a great line of cases, to step in and deprive a suitor of his rights under the law, because other rules called rules of equity conflicted with the law. Thus in the early days a suit on a bond at law was always for the full penalty, though the bond in terms provided that it should be void on payment when due of a less sum which it was given to secure, and the law courts always gave judgment for the full penalty. But the chancellor, sitting as a court of equity, would always enjoin the plaintiff from collecting more on his judgment than the amount of money really due. Courts of law could give no relief from mistakes in written contracts. Courts of equity undertook to reform them in accordance with the original purpose of the parties. The courts of law for centuries paid more regard to form than to right. The forms of pleadings, the choice of remedies and mode of procedure were stumbling blocks over which any suitor was liable to fall. Following the rule that it is for the court to decide only the exact question before it, the plaintiff frequently failed to obtain relief because his attorney had chosen the wrong form of action, but the court would not indicate the

right one, and often a second suit would result similarly. The choice of courts might lead to the same result, if the wrong one was selected and he was forced to begin anew. There was the court of "*piepoudre*," dusty feet, held by the steward of the person entitled to the tolls of a fair or market, with jurisdiction only to decide causes arising from dealings at that fair or market, a very summary court, which generally decided causes on the very day they arose. The court baron was incident to every manor, held by the steward within the manor, and dealt with the rights of tenants of copyhold estates. There was also a common law court bearing the same name, held by the freeholders of the manor with the steward as registrar, with jurisdiction over rights to lands within the manor and some personal actions involving less than forty shillings. The hundred court was similarly constituted with similar jurisdiction over the hundred. The county court, presided over by the sheriff, had a more general jurisdiction over minor causes and was much more frequently resorted to. In early times it was a court of much importance, presided over by the bishop and ealdorman, with the principal men of the shire as judges. The court of Exchequer Chamber was originally vested with jurisdiction over causes for the collection of the king's revenues and looked after the revenues of the crown, but it afterward came to exercise both common law and equity jurisdiction in nearly all kinds of causes. As a court of equity it was made up of the lord treasurer, the chancellor of the exchequer, the chief baron and three puisne barons. The treasurer and chancellor took no part in the exercise of the common law jurisdiction of this court. Its jurisdiction of causes between private persons was based on the fiction, that the complainant was a debtor to the king and his ability to pay was affected by the wrong of which he complained. Superior in rank to all the foregoing courts was the court of Common Pleas, sitting at Westminster with general jurisdiction over common law actions between private persons. Above this and highest of the common law courts was that of King's Bench, composed in Blackstone's time of a chief justice and three puisne justices, with general

jurisdiction of all common law cases, civil and criminal, and general supervision of all inferior courts and power to reverse their judgments. The king himself sat in this court in early times and was regarded as personally present by a legal fiction in all later times. It had appellate jurisdiction by writ of error, not only in causes arising in Great Britain, but also from the court of King's Bench in Ireland. The High Court of Chancery, presided over by the chancellor or lord keeper of the great seal, the highest officer under the king, was one of very extensive powers. It exercised common law powers in a limited class of cases and was the office of justice from which all original writs and commissions under the great seal were issued. Its equity jurisdiction was much more extensive and important than its common law powers. In early times it is said that the chief judicial employment of the chancellor was in devising new writs, to afford remedies where none were afforded by the writs in use, but later by subpoena the defendant, against whom complaint was made and equitable relief sought, was required to appear before the chancellor and the cause was determined by him. Blackstone gives the principal credit for the establishment of the system of equity practice to Heneage Finch, Earl of Nottingham, who became chancellor in 1673. Above all these courts was the House of Lords from which writs of error might issue to the Exchequer Chamber, the King's Bench and the High Court of Chancery, but which had no original jurisdiction. The great courts had their permanent seats at London, but circuit courts were held by the king's special commission in all parts of the kingdom for the trial of civil and criminal causes by jury and the determination of issues of fact. These courts were commonly called courts of assize and nisi prius. Besides these were the ecclesiastical, military and maritime courts and a great number of courts of special, local and limited jurisdiction, in the cities and towns, at the universities and elsewhere, to describe all of which would consume unnecessary space.

In 1873 a comprehensive reform of the whole system of courts and procedure was undertaken by parliament. Ch. 66-36 and 37 Vict. consolidated the old High Court of Chancery,

Court of King's Bench, Court of Common Pleas, Court of Exchequer, High Court of Admiralty, Court of Probate, Court for Divorce and Matrimonial Causes, and London Court of Bankruptcy into one Supreme Court of Judicature in England, divided into the High Court of Justice and the Court of Appeal. The High Court of Justice is constituted of the Lord Chancellor, Lord Chief Justice, the Master of the Rolls, Chief Justice of the Common Pleas, Chief Baron of the Exchequer, the Vice Chancellors, Judge of the Court of Probate and of the Court of Divorce and Matrimonial Causes, the puisne judges of the Courts of King's Bench and Common Pleas, the Junior Barons of the Exchequer, and the Judge of the High Court of Admiralty; except such of them as are made ordinary judges of the Court of Appeal. Vacancies afterward occurring are to be filled by appointment by the crown from persons possessing the prescribed qualifications. The Court of Appeal is constituted of five ex-officio judges thereof, and so many ordinary judges not exceeding nine as the crown may appoint. The ex-officio judges are the Chancellor, Chief Justice, Master of the Rolls, Chief Justice of the Common Pleas and Chief Baron of the Exchequer. The judges hold office for life, subject to removal by the king on address by both houses of Parliament. Judges are disqualified from sitting in the House of Commons. The ordinary judges are allowed salaries of £5,000 per year, and those of higher rank larger sums. Three of the judges are allowed secretaries with salaries of £500 per annum and all are given two clerks with salaries respectively of £400 and £200.

All the jurisdiction exercised by the various courts so consolidated and divers others named in the act is vested in the Supreme Court of Judicature, and all the judges are authorized to administer law and equity in any cause coming before them. Though the distinctions between the rules of law and of equity are still preserved, the courts are authorized to apply them in any case and to administer both in the same action. All the old, narrow, technical rules which occasioned so many failures of justice were swept away, and a simple and comprehensive system established with modes of procedure de-

signed to afford speedy remedies. Plain rules for the distribution of business are laid down, with power in the court to correct mistakes with reference to the division of the court before which the cause is to be heard and to permit all amendments calculated to promote justice. Appeals may be taken from the High Court of Justice to the Court of Appeal. In 1875 a further act was passed, Ch. 77-38 and 39 Vict., to more fully carry into effect the reforms inaugurated by the act of 1873. Some slight modifications of the number of judges and constitution of the courts were made, and the London Court of Bankruptcy was restored as a distinct court, subject to appeal to the Court of Appeal. Provision was made for regulating the holding of assizes and sessions for the trials of issues of fact by Orders in Council and for the regulation of various matters by rules of court to be submitted to parliament and subject to be annulled by it. The Rules of Court appended to the act prescribe the practice to be followed in the courts. Every action in the High Court is commenced by summons, on which must be endorsed a statement of the nature of the claim made in the most concise and general terms and the address of the plaintiff's solicitor. The summons may be issued out of any registry and the cause assigned to any division of the court and to such judge by name as the plaintiff may think fit, subject to the power of the court to transfer it on motion to any other division. The defendant is required to enter his appearance in eight days after service of the summons, and, except in certain cases provided for in the rules, the appearance must be entered in London, and if so entered there the cause will proceed there. If a defendant resides in the district from the registry of which the summons issued, he shall appear in that district registry. If no appearance is made by the defendant, final judgment may be rendered against him. All persons in any manner interested in the controversy may be made parties, and great liberality is allowed in joining different causes of action, subject to the power of the court to try different issues separately where deemed best. After the appearance of the defendant, unless he states that he does not require a state-

ment of the complaint, the plaintiff must within the time fixed by the rules deliver to the defendant his statement of complaint and the relief demanded; the defendant then delivers to the plaintiff a statement of his defense, to which the plaintiff may reply. Where questions of law are presented by the facts stated in a pleading, the court may proceed to consider and determine the law questions before hearing proof as to the facts. All appeals to the Court of Appeal are by way of rehearing, and no bill of exception is required or other proceeding in error in ancient form. The court on hearing the appeal does not review the errors committed by the trial court, but may allow amendments, hear further evidence, give any judgment and make any order that ought to have been made by the trial court. The original papers and the notes of evidence taken at the former hearing may be used. The various points of practice are most fully and clearly covered by the rules, and to them are appended forms of the various writs and pleadings to be used, framed in simple and pointed language. After having had the most complex and in many respects absurd and unreasonable system of practice in its courts, England can now fairly claim to have the simplest, most comprehensive and excellent system of courts and code of practice of any country in the world. By Ch. 59-39 and 40 Vict. appeals are allowed from the Court of Appeal in England and certain courts in Scotland and Ireland to the House of Lords. No appeal can be determined in the House of Lords unless there are present three of the following persons: The Chancellor, the Lords of Appeal in Ordinary and such Peers of Parliament as hold or have held high judicial offices. The Queen was authorized to appoint two Lords of Appeal in Ordinary with salaries of £6,000 per year. The House of Lords was authorized to sit during any prorogation of Parliament or dissolution if authorized by the queen for the purpose of hearing causes. These acts were followed by that of 55 and 56 Victoria Ch. 43, which establishes a uniform system of county courts and prescribes a simple system of procedure therein. The Lord Chancellor is authorized from time to time to appoint not exceeding sixty

judges for these courts. Provision is made for the abolition of manorial and many other inferior courts, and the jurisdiction of most causes involving small sums is conferred on the county courts. While the excellence of this code is so marked, the fact should not be overlooked that the constitution of all the courts still accords with the aristocratic ideas which have so long dominated in England. The unearned and unmerited privileges enjoyed by the nobility, the landed and moneyed aristocracy, are not likely to be diminished by any action of the courts. The judges are paid excessive salaries and thereby led to believe in the appropriation of public moneys for the benefit of the ruling class in unreasonable ways. The highest judicial officers are always added to the ranks of the titled nobility, and the final decision of all questions of law is still vested in the House of Lords, which stands as the representative and beneficiary of the injustice of the governmental system, and should be rated morally as an exponent of a moribund system of oppression. It has less of the spirit of progress and of the sense of natural justice due from man to man and from the state to its citizens than any other great representative body in England. The evil of conferring this final jurisdiction on a body wholly made up of persons accorded special, and for the most part wholly unmerited privileges and distinction, is not in practice nearly so great as might be expected, for the causes are decided mainly by the trained judges, who in matters relating to trade and commerce, on which the prosperity of Great Britain rests, exhibit a most enlightened sense of justice.

There is still another tribunal, unique in its composition and functions, which was established by Ch. 41, 3 and 4 William IV, in 1833 for the determination of appeals from India and the various colonies and dependencies of the British Empire. It is styled "The Judicial Committee of the Privy Council," and as first established was made up of the President of the Privy Council, the Lord Chancellor and such other members of the Privy Council as shall hold or have held the office of Lord Keeper or First Commissioner of the Great Seal, Chief Justice of the King's Bench, Master of the Rolls,

Vice Chancellor of England, Lord Chief Justice of the Common Pleas, Lord Chief Baron of the Court of Exchequer, Judge of the Prerogative Court of the Archbishop of Canterbury, Judge of the High Court of Admiralty, Chief judge of the Court of Bankruptcy, and the King might appoint two others. At least four of these were required to be present at the hearing of a cause. By the Act passed in 1908, 8 Edw. 7, ch. 51, persons having held the office of Chief Justice of the High Court of India and some others designated in the act, being members of the Privy Council, were added to the list. This tribunal has no jurisdiction of appeals from any domestic tribunals, but only from the colonies and dependencies. Controversies are decided by this tribunal in accordance with the law of the place where they arose which is applicable to them, whether it be the Code of Manu or the Koran in India, or the Acts of the Canadian, Australian, New Zealand or other colonial Parliament. The determination of the Committee is put in the form of a report on the case but has all the force and effect of a judgment, and Sec. 21 of the Act of 1833 provides for carrying it into execution.

Most of the leading nations of Europe and America have recognized the duty of providing for the education of the people as resting on the government. Though England has long had universities of very high rank and many schools of various degrees of usefulness, it has never established a complete system of free schools. The elementary education act of 1876, Ch. 79-39 and 40 Vict., makes it the duty of parents to cause their children to be instructed in reading, writing and arithmetic and provides for public assistance in the payment of tuition to the amount of 3d. per week, where parents not paupers are unable to pay. Excuses for failure to so educate are defined by statute, among which is one that there is no public school within two miles. By subsequent acts many further improvements have been made. From an early period England has been perhaps as well supplied with private schools as any country, and the education of children has always been looked on as mainly a private concern of parents. People of wealth have generally paid much attention to the instruction

of their own children, but the public policy, which provides instruction for all at public expense and enforces attendance, has never been fully adopted. Still the improvement in late years has been very marked, and the United Kingdom of Great Britain and Ireland now ranks in average attendance at school below only Scandinavia, Germany, Switzerland and the United States. Ch. 87-38 and 39 Vict. entitled "An act to simplify Titles and facilitate the Transfer of Land in England," provides for the registration of land titles and all interests and encumbrances on freehold lands and for the determination by a registrar as to the ownership of lands. This is not a recording act, in the sense in which the term is used in America, but makes provision for a record showing the present ownership of the land and the encumbrances thereon. It is a very radical change from the ancient system of transfers by verbose instruments, but aside from affording evidence of title it makes no change in the land laws of the kingdom. Though intended to simplify, the peculiarities of English land tenure make necessary elaborate and rather complex and confusing regulations, including an appeal to the courts for the determination of disputed titles. No change has been made in the rules of inheritance or the theory of land tenure. Ch. 36-38 and 39 Vict. Artizans and Laborers Dwellings Act, 1875, makes provision for the improvement of unsanitary districts in the cities in England, and Ch. 49 of same session in Scotland also, in accordance with a plan proposed by the local authorities and ratified by Parliament, for condemnation of the grounds, where the owners do not consent to make the improvement, and for the prosecution of the work at public expense. The details of each improvement are to be worked out by the local authority according to the needs of the particular district, no general system being attempted. The general purpose of the act is a most excellent one, and a most difficult problem has been dealt with in a manner calculated to, and which in fact has already resulted in much alleviation of the miseries of the dwellers in overcrowded sections of the great cities.

In its institutions for higher education Great Britain is even

farther behind the other leading nations, having but eleven universities with 13,400 students, to twenty-one in Germany with 26,680 students and three hundred and sixty in the United States with 60,000 students. In no other Christian country is wealth so unequally distributed. The late Queen was granted an income of £385,000 besides the revenues of the duchy of Lancaster of £50,000 per year, and other members of the royal family received £252,000, in return for which no valuable public service was required. These expenditures are merely to maintain the idea of united authority and the display of royalty. Mulhall states the incomes of the people as follows: Gentry 222,000 families with average incomes of £1,500, amounting annually to £333,000,000. Middle, 604,000 families with an average income of £400. Trades people 1,220,000 families with average incomes of £200 and working people 4,474,000 with incomes of £97 per year. Below these there were in 1889, 1,015,000 paupers and 25,100 criminals charged on the public. Though this showing is an exceedingly strong impeachment of the general system prevailing, there has been a marked improvement in the condition of the working classes during the last century. The last half of the century has been a period of great moral progress and many admirable reforms. Popular representation is no longer altogether mythical. The election laws go into many elaborate details but speaking generally the elective franchise for members of the House of Commons is now extended to freeholders owning property of the clear rental value of 40s. per year, and householders and lodgers paying an annual rent of £10 and to some other householders and lodgers who pay taxes, and the voting is by secret ballot. As we have seen the school system has been greatly improved, and while in 1830 at the time of the establishment of the Board of Education they were allowed but £30,000 to expend on schools, the expenditures of 1906 are given at £22,000,000.

Reference is often made to the British constitution, and judging from recent history no country has a more firmly settled form of government, yet there is in fact no written constitution, and the limitations on the powers of the king,

the Parliament and the officials exercising authority under them are nowhere clearly and authoritatively defined. Though the king now is generally regarded as a mere symbol of authority in fact exercised by the leaders of the party having a majority in the House of Commons, his ancient prerogatives have never been formally annulled. His assent is necessary to every act of Parliament, he is the fountain of honor and vested with power to appoint to the great offices. It is through his general sovereignty that the theory of unity of the vast colonial empire is maintained. A king, disposed to rule in fact, would have ample basis of law for the exercise of his authority. The marked peculiarity of the British government, however, is that this very indefiniteness in its constitution admits of the adaptation of the governmental system to the peculiar conditions prevailing in different parts of the empire. The United Kingdom is ruled in accordance with the laws enacted by Parliament, and generally legislation is moulded by the elective branch, the House of Commons. The refusal of the House of Lords to assent to tax bills and other legislation passed by the Commons occasioned the Parliament Act of 1911 below mentioned. In no recent instance has the king refused his concurrence. In practice the Ministry, representing the majority party of the Commons, introduces the important bills as government measures, and the defeat of such measures is usually followed by the resignation of the ministry thus left without the support of Parliament. The nominal head of the whole empire is the king, the actual head is the cabinet, which may be made up of the First Lord of the Treasury (Prime Minister), the Lord Chancellor (President of the House of Lords), the Chancellor of the exchequer, the Lord President of the Council, and the Secretaries of State for the following departments, Home, Foreign Affairs, Colonies, War, and India, the first Lord of the Admiralty, the President of the Board of Trade, the President of the Local Government Board, the Postmaster General, the first Commissioner of Works, Vice-President of the Council of Education, the Chief Secretary of the Lord Lieutenant of Ireland, the Secretary for Scotland and the Chancellor of the Duchy of

Lancaster. The constitution of the cabinet has never been regulated by any act of Parliament, and it has varied in recent years in the number of persons included in it, the first nine being nearly always included and one or more of the others often omitted. In theory and historical continuity these are the counsellors and advisers of the king, chosen by him to assist in the government of the kingdom; in fact they are the ruling power, not only at home, but also in those parts of the empire ruled from England. They lead the majority in Parliament and in the most essential particulars dictate the legislation. They are inferior to the House of Commons only from the fact that they are at all times dependent on its support. A vote of want of confidence in the ministry or the defeat of a government measure necessitates the retirement of the persons filling the cabinet positions and the choice of others having the confidence of the House. The number of members of the House of Lords fluctuates, being 515 in 1898, including a varying number of princes of the blood royal, two archbishops, twenty-four bishops, sixteen Scottish peers, elected for each parliament by the peers of Scotland, twenty-eight Irish Peers elected for life, and the balance peers of the United Kingdom. The House of Commons then had 670 members elected from the constituent countries as follows: England 465, Wales thirty, Scotland seventy-two, and Ireland 103. This gives to England a clear majority over all, and no measure can pass without English support.

Repeated refusals of the House of Lords to concur in the passage of acts sent up from the House of Commons after popular approval of the acts had been given through dissolution and election of new members of the House, led to an important change in the constitution in 1911. The Parliament Act, 1 Geo. V. ch. 13, makes provision for regulating the relations between the two Houses of Parliament. The Preamble states that it is intended to substitute for the House of Lords a Second Chamber constituted on a popular, instead of an hereditary, basis, but that such substitution cannot be immediately brought into operation; that provision will hereafter require to be made in a measure effecting such substitu-

tion for limiting and defining the powers of such Second Chamber, but that it is expedient to make such provision as appears in the Act for restricting the existing powers of the House of Lords.

If a money bill which has been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up, it shall unless the House of Commons direct to the contrary, be presented to the Sovereign and become an Act of Parliament on receiving the Royal Assent, notwithstanding that the House of Lords has not consented to it. The act defines what are money bills and provides for a certificate by the Speaker of the House which is conclusive of the character of the bill.

If a public bill (other than a money bill or a bill extending the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not) and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, it shall, on its rejection for the third time, unless the House of Commons direct to the contrary, be presented to the Sovereign and become an Act of Parliament on receiving the Royal Assent, notwithstanding that the House of Lords has not consented to it. This provision does not take effect unless two years elapse between the date of the second reading in the first of the sessions of the bill in the House of Commons and the date on which it passes the House of Commons on the third of those sessions.

A bill is rejected by the House of Lords if it is not passed by that House either without amendment, or with such amendments only as may be agreed to by both Houses. The House of Commons may on the passage of a bill through the House in the second or third session suggest any further amendments without inserting them in the bill. Any such suggested amendments are to be considered by the House of Lords, and, if agreed to by that House, are treated as amendments made

by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons does not affect the operation of the section in the event of the bill being rejected by the House of Lords.

Any certificate given by the Speaker is conclusive and cannot be questioned in any court of law.

The territories ruled by Great Britain may be divided generally into 1. Those having representative governments with ministers responsible to popular bodies, including Canada, Newfoundland, Queensland, New South Wales, Victoria, South Australia, West Australia, Tasmania, New Zealand, and Cape Colony. 2. Those having representative governments but subject to veto on their legislation by the home government and to the appointment of officials by the crown, including Isle of Man, Channel Islands, Malta, Cyprus, Ceylon, Mauritius, Bermudas, West Indian Islands, British Guiana. 3. Crown colonies, ruled by the home government, Gibraltar, India, Aden, Perim, Straits Settlements, Hong Kong, African possessions other than South Africa, British Honduras, New Guinea, Fiji Islands and Falkland Islands. Besides these there are various districts over which Great Britain assumes a protectorate, without having instituted any settled government, including Borneo and much of Africa. Since the loss of the American colonies in 1776 Great Britain has pursued a most wise and liberal policy toward colonies settled by British and other European emigrants in distant parts of the world. Though there is some diversity in the relation of the colonies of the first class above named to the home government, they are generally accorded as much liberty of local legislation as the Parliament of the United Kingdom enjoys at home. The government of each of the colonies of all classes has at its head a governor general, appointed from England. In Canada there is a senate made up of members named by the Governor General in Council and an elective house. There is a marked similarity in the legislation to that of England, but full liberty is accorded the Canadians to regulate their local affairs as they please. Even greater freedom is allowed the more distant colonies in Australia and New Zealand, and

the last named country is now looked upon as the one having the most socialistic schemes in practical operation of any country in the world. Not only are its railroads, telegraphs and telephones owned by the state, and its express business carried on by it as in most European countries, but it also has public life insurance and a system of compulsory arbitration of disputes between employers and employees, a land policy calculated to assist the poor to acquire homes, provisions for securing employment to all, excellent civil service rules, and many other humane enactments designed to better the condition of the working class.

Australia, divided into various districts, is equally free to do as it pleases, and to it we owe the first draft of the law providing for an official ballot. No other government is so free to deal with all governmental problems, unhampered by either constitutional restrictions or abstract theories, as Great Britain. Most despotic governments fear to allow anything like the expression of popular will or local freedom of political action, yet under this monarchy the most radical reforms are permitted in the distant colonies by local representative assemblies, without any hindrance whatever from the home government. The United Kingdom is itself a strange combination of advanced social organization and mediaeval injustice. A few persons monopolize the land, which is mostly held in great estates, though England is one of the most densely peopled countries in the world. Mülhall gives the size and ownership of estates of over one acre as follows:

Acres in Holding	Number of Owners England	Acres Owned	Annual Rental
Under 50	194,620	2,230,000	£12,950,000
50 to 100	25,840	1,790,000	4,300,000
100 to 500	32,320	6,830,000	13,680,000
Over 500	10,070	22,010,000	39,310,000

Scotland			
Under 50	12,940	110,000	2,270,000
50 to 100	1,210	90,000	380,000
100 to 500	2,370	560,000	1,680,000
Over 500	2,705	18,160,000	8,570,000
Ireland			
Under 50	14,600	224,000	980,000
50 to 100	3,500	250,000	310,000
100 to 500	8,010	1,956,000	1,770,000
Over 500	6,500	17,720,000	8,990,000

From this it appears that of the lands held in tracts of such size as to be used as farms in England only 12.04 per cent is held in tracts of 100 acres or less, while 66.08 per cent is held by great landowners in tracts of over 500 acres, averaging 2,185 acres each. In Ireland only 2.3 per cent is owned in tracts of 100, acres or less, while 88 per cent is held in tracts of over 500 acres averaging 2,726 acres each. In Scotland but 1.1 per cent is in farms of 100 acres or under and 96 per cent in those with over 500 acres, averaging 6,713 acres. In England some large holdings have been purchased by successful merchants, manufacturers and others, who have acquired wealth by their own efforts, but most of them throughout the United Kingdom are survivals of the feudal system and based on kingly favor or successful private wars. The large holdings in Ireland mostly date from the time of William III, when the estates of the Irish Catholics were parcelled out to English favorites. In Scotland the great lords still hold the land as the heirs of their feudal ancestors. The average size of landed estates in the leading countries is given by Mulhall as follows:

France	32	acres		
Germany	37	"	Belgium	18 acres
Russia	31	"	Sweden	300 "
Austria	20	"	Norway	200 "
Italy	36	"	Denmark	115 "
Spain	95	"	U. S.	134 "
Holland	45	"	Great Britain	390 "

There is no fair approximation to justice in its distribution of the face of the earth, in its general system of land tenure, or in its theory of the descent and distribution of property. How then does it come that England has been so much praised for the liberality of its laws and the freedom of its people? First, England from an early day became the most tolerant of ideas and indulged the greatest liberty of speech. It took the lead in searching out the true sources of the wealth of distant lands and in securing to itself a share of it. It has from an early day indulged and encouraged its people in adventure, and was among the first to fully appreciate the true principles relating to the exchange of products and the vast benefits of commerce. Having opened its ports to all the world it has become its central market. No people understand better than they, that commerce is an exchange of surplus products, which would go to utter waste if left in the hands of the producers, so that the transfer from the producer who has no use for them to the consumer who does need them is a clear saving of the whole value. England owes its greatness, not to its mediaeval land tenure, but to the freedom of its people to engage in manufacturing and commercial pursuits. Though its school system has been so deficient, its vast navy and merchant marine and its remote trading colonies have from an early day furnished schools of practical instruction of far greater economic value than the monkish schools of the continent, where dead languages and dead theology were taught. No other people have had such a genius for statistics, for gathering information useful to the merchant, the manufacturer, and the seaman. Charts of all the seas, maps of all the lands, and useful information about all the various peoples of the earth and the countries in which they live, have been industriously gathered, printed and distributed among those who could profit from them. This is not merely an efficient system of practical education, but it is the path of progress and improvement. No other government is so closely allied with the business enterprises of its people. In the early days these alliances were mainly to aid favorites of the crown with trading monopolies, and

reached their culmination in the time of Elizabeth, when monopolies had become so numerous and trade a matter of so much concern that public attention was attracted to it. It was perceived that the general public suffered from all these monopolies, and that each monopolist paid tribute to each other monopolist. The last to yield their advantage were the great landowners, who sought to keep up the price of bread by prohibiting importations of grain, but famine came to enforce the demands of reason and justice, and trade monopoly was abolished so far as it could be done by opening the ports of the country freely to all who had goods to sell. The system of rulership by political parties has led to the steady growth of a public conscience. Criticisms of the conduct of the opposite party have brought to the attention of the country the moral standards and tests by which the actions of men are to be measured, and the English public opinion of to-day is far more enlightened and humane than that of a century ago. Moral standards though better observed are not yet accepted as guides to the conduct of public officials. The lower standard of profit is the one most followed. The party in power always seeks to further what are called British interests. Any combination of persons or interests sufficient in numbers or wealth to attract attention can ordinarily rely on the government to give it aid and protection. The government has from an early day attached to itself, not merely the great landowners, but also those having money to invest, and has in many ways encouraged money saving and investment in public or semi-public stocks and securities. The East India Company and the Bank of England are instances of a kind of partnership between the government and certain of its citizens. In the case of the first named company loans were made to the government in return for commercial and political favors and assistance. In the case of the Bank each aids the other in its monetary affairs, the Bank being the public depository and financial agent of the government as well as a great banking concern dealing with the public. But it is not in such institutions, which are common to other countries, that the peculiar bent of the British government is manifested. It has the great-

est navy of any nation on earth and pursues a general policy of advancing the commercial interests of its people in distant lands and among people living in a low social state by force of arms. It is frequently at war with some tribe or nation in some part of the earth to aid its merchants and capitalists in their enterprises. It seeks not merely political supremacy and revenues from the taxation of industrious people, such as those of India, but the more fruitful sources of revenue based on theories of property rights. Since the overthrow of Napoleon Great Britain has not engaged single handed in war with any great European nation. In the Crimean War most of the troops were furnished by her allies. Her armies have been employed in China, India, Africa and the islands of the seas, with a view to the profit of her merchants or investors. The elasticity of the British constitution is such that the cabinet, the actual ruling force, can be enlarged or contracted as may be found convenient in order to include recognized leaders of the majority in the House of Commons without taking in any objectionable person; colonies of Englishmen accustomed to take part in governmental affairs can be left to govern themselves, and the Asiatic multitude in India can be ruled after the manner of Oriental despots, without any representation in the government. The Governor General of India with his council is, so far as the people of India are concerned, the viceroy of the King of England with unlimited powers both of legislation and administration. The only checks on his authority are those imposed by the home government. The people of India have none. The Governor General in fact exercises very arbitrary powers, and the people of India are heavily burdened with taxation for people so poor. They support a great number of British officials at very high salaries with very little advantage from their presence. The only influence tending strongly to mitigate the arbitrary powers wielded by the officials are their education to respect the rights of others and public sentiment in England, which would condemn anything like barbarous treatment of the people. While the Governor General in council, subject to the approval of the home government, has full legislative power,

the system of laws by which the people are governed and the rules by which causes are decided in the courts are found in the ancient code of Manu, as modified by local influences, the Koran for Mohammadans, and local customs among tribes that do not accept either the Code of Manu or the Koran. The system of castes, which has so long prevailed and which rests on these ancient laws, affords a very convenient basis for the super-imposition of a military despotism. By taking the military caste into the army under pay of the British rulers no class is left with any genius for the organization of an opposing force. By shifting these troops from their native provinces to those in which they are strangers their fidelity is secured. Mohammedan troops can be relied on in Brahman districts and vice versa. In one particular at least British rule is beneficial; the aids to commerce are introduced more rapidly than they would have been. Railways and telegraphs, postal facilities, harbor improvements and the like have improved the means of communication with other countries and between different parts of India. The revenue derived from land tax, railways, opium, salt tax, post office, irrigation and sundry sources in 1906-7 was £73,144,600; expenditures £71,555,200. The purposes for which this money is used are summarized as follows:

Debt, Interest on	£8,405,000
Army	21,586,100
Railways	10,676,200
Irrigation	2,736,800
Civil Works	4,358,700
Sundries	23,792,400

The advantages gained by Great Britain from sovereignty over India are not expressed by any direct contribution to the home treasury by way of taxation, but by the many ways in which British subjects are enriched through the administration of the government in India and profits of its commerce. It may be observed that no part of the money collected by the government is expended for the education of the natives. No school system has been established to

disseminate European ideas and information, but the native teachers are left to teach the code of Manu and the Brahman, Buddhist and Mohammedan doctrines, leaving to Christian missionaries the difficult task of demonstrating the superiority of a religion of peace, coming from a conquering nation ruling by force of arms. In some parts of India and in other portions of the globe, where the direct exercise of the governing power through British officials is not yet expedient, native rulers are utilized, and a protectorate is established over them, through which commercial advantages are secured without full responsibility for maintaining order.

In all its operations the British government is an intensely practical one, counting the money cost of everything and the profits likely to accrue to private citizens as well as the public treasury. In its legislation the British parliament wisely abstains from minute regulations of all administrative matters, leaving details to be worked out by those entrusted with the undertaking in accordance with the general plan formulated by Parliament. The new code of procedure in the courts was prepared by the judges and merely approved by parliament. The inability of a great representative body like the House of Commons to deal with the details of matters requiring long continued special study and exceptional opportunities for obtaining information is there better appreciated than in most legislative bodies. In considering the causes which have given to Great Britain the leading position it now holds, the encouragement of all sorts of voluntary organizations by the people for useful purposes must not be overlooked. Not only have corporations organized to carry forward great commercial enterprises and manufacturing schemes been permitted and often greatly aided by the government, but in recent years coöperative societies, laboring men's organizations and friendly societies of all sorts, designed to bring about more just conditions and aid the poorer classes in their struggles for existence have been permitted and general laws passed granting them corporate powers. These societies, have not only accomplished much material good for their members, but have also exercised a most salutary influ-

ence on public sentiment. To the various labor organizations is largely due the improvement in the conditions of the toiling millions and the growing sense of public accountability for unjust conditions. Notwithstanding the great activity of the British Parliament in law making, and that 152 volumes are required to contain the enactments which have been preserved, but a very small part of the law administered by the courts is to be found in any act of Parliament. Like the British constitution the common law of England is unwritten. For authoritative expression of it the student must go to the reported decisions of the courts. In earlier times the text writers, Littleton, Coke, Blackstone, Chitty and others were much consulted and relied on, but, with the increased volume of business in the courts and the rapid multiplication of reports of decisions, lawyers now rely almost exclusively on the opinions of the higher courts for the exact rule in any case. Of these reports there are thousands of volumes and many new ones are coming out each year.

Note: For all matters of legislation I have consulted and relied on the published Statutes at Large. References to particular Acts of Parliament are made in the text.

For matters of history the works of Hume, Burke, Goldsmith, Macaulay, Lingard, Hodgkin, Holdsworth, and the Encyclopaedia Britannica have been consulted.

For Statistics

Mulhall: Dictionary of Statistics.

U. S. Statistical Abstract.

Encyclopaedia Britannica.

CHAPTER XXV

UNITED STATES

The first voyages of discovery by Englishmen to America were undertaken by private adventurers, rather than by the government, and the first settlements were similarly effected. It was nearly a hundred years after Columbus made his discovery till the English made any well defined effort to gain a foothold on the American continent. In 1584 Queen Elizabeth granted to Walter Raleigh a charter "to discover, search, find out and view such remote heathen and barbarous lands, countries, and territories not inhabited by Christian people as to him his heirs and assigns, and to every and any of them shall seeme good, and the same to have holde, occupie and enjoy to him, his heirs and assigns for ever, . . . and the said Walter Raleigh, his heirs and assigns, and all such as from time to time by license of us our heirs and successors shall goe or travaile thither to inhabite or remaine, there to build and fortifie, at the discretion of the said Walter Raleigh, his heirs and assigns, the statutes or acte of Parliament made against fugitives, or against such as shall depart, remaine, or continue out of our realme of England without licence, or any other statute, acte; lawe, or any ordinance whatsoever to the contrary in any wise notwithstanding." License was given to all subjects to join in the enterprise and to take their goods with them. Raleigh was given leave to organize forces and fight and expel any one who might attempt to interfere with his possession, and to set up a government in the country occupied, including all the lands within 200 leagues of the settlements made by him, governing as nearly as may be in accordance with the laws of England. The only right reserved was that of sovereignty and one-fifth the gold and silver ore produced. The effect of this charter was to grant to Raleigh and such British subjects as might choose to go

with him, the right to establish a colony in any country, not inhabited by Europeans, which they could find, take and hold. Under this charter five voyages to America were made and the first colony was landed on Roanoke Island, Virginia, in 1585, but soon abandoned it and returned to England. In 1587 a second colony arrived at Roanoke, where it was left to make its way as best it could during the war between England and Spain. Three years later, when English ships again visited Roanoke, the colony had wholly disappeared. No permanent settlement was effected under Raleigh's charter.

In 1606 James I granted a charter to Sir Thomas Gates, and seven other persons by name, and such others (not named), as should be joined unto them to establish two colonies in Virginia, the first colony by Gates, Somers, Hackluit, Wingfield and other adventurers of and for London, to settle between latitude thirty-four degrees and forty-one degrees, with territory extending along the coast for fifty miles each way from their first settlement and 100 miles inland, and the second colony, by Hanham, Gilbert, Parker and Popham of Plymouth, for a district of equal size with the first, between latitude thirty-eight degrees and forty-five degrees, and the first settlements to be not less than 100 miles from any prior settlement. The charter provided that each colony should have a council of thirteen members to be appointed and govern the colony in such manner as the king should direct. Another council of thirteen in England was provided for, to have the "superior managing and direction" of these colonies and others that might be established between latitude thirty-four degrees and forty-five degrees. The grants to these colonies were buttressed with a provision that no grant should be made to others of lands behind their tracts without the express license or consent of the council of the colony. Leave was granted to all British subjects to emigrate to the colonies with their goods and arms, and to make war on anyone attempting to interfere with their possessions. Patents for the lands to such persons as the council of the colony or the majority of them might nominate, to be issued under the great seal, were promised. "To be holden of us our Heirs

and Successors as of our Manor of East Greenwich in the county of Kent, in free and common Soccage only and not in Capite."

The London company proceeded at once to organize an expedition, and in the spring of 1607 the first permanent English settlement was made at Jamestown on the James River in Virginia by a colony of 105 men under Capt. John Smith. The following winter 120 men were added and in the fall of 1608, sixty-eight more, accompanied by two women, who came not as settlers but as visitors.

In 1609 a second charter was granted by which a great number of persons by name and many companies of Grocers, Tailors, Mercers, etc., were incorporated under the name of "The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia," and given all the rights before conferred on the first colony under the prior charter with a more extended territory running 200 miles each way up and down the coast from Point Comfort. The council in the colony was done away with, and a much more numerous council in England was named in the charter and given power to appoint a governor and such other officers as they might see fit for the government of the colony. The power to divide and convey the land covered by the grant was transferred to the corporation, and that of making laws and regulations for the government of the colony to the council named. The only reservation of revenue was one-fifth of all gold and silver and duties on merchandise imported into England of five per cent. The company was authorized to make war when necessary for the protection of its interests. This new corporation with its large membership, whose names cover three and a half large printed pages of the charter, proceeded vigorously with the work of promoting the settlement of the country and, in June, 1609, nine ships with 500 colonists sailed from England. The Colonists fell into difficulties when Captain Smith went back to England on account of a wound he had received. In six months after he left there were but sixty persons in the colony, and they had started down the river on

their way to the Newfoundland fisheries, when they met the new governor, Lord Delaware, with a large number of new colonists and fresh supplies. The cultivation of tobacco was taken up, instead of the unsuccessful search for gold, and became very profitable.

Law-making for the colony was undertaken by the council of the corporation in England, and in 1611 a set of very strict laws was sent over to Virginia from London. Theft and disrespectful language toward the king were made punishable with death, and swearing and absence from public worship were also made capital on the third conviction.

In 1612 the third and last charter to this colony was issued, providing for meetings of the company in England once each week or oftener for minor affairs and for general "courts" of the company, to be held four times each year, with power at any general court to elect members of the council, to nominate and appoint such officers as they should think fit for the government of the affairs of the company, to make laws for the government of the plantations not in conflict with the Laws of England, to admit and expel members for cause and to enforce the performance of their contracts by person bound to serve the company. These charters, it will be noticed, were not to the people who might settle in Virginia, but to people in England who furnished means and promoted the settlement of the colony by others. It was a corporate venture, organized in accordance with the general principles of business corporations, but with political powers added.

Acting under the powers of legislation conferred by this charter, the Company sent out a set of very strict laws, framed in accordance with the savage severity then prevailing in the laws of England. Theft and disrespectful language spoken of the king were again made capital crimes, and swearing and absence from public worship were also punishable with death at the third offense. The settlement of the colony thus far had been almost exclusively by men. In 1619 a ship load of ninety girls was sent over, who were very quickly married to planters and became the mothers of nu-

merous families. About 1200 other settlers went in the same year. Convicts were also sent from England and sold for servants for a term of years. In the same year a Dutch ship brought in the first cargo of African slaves and sold them to the planters. Legislation for the colony by the corporation in England was not found to be satisfactory and in 1619 "that the planters might have a hand in the governing of themselves, it was granted that a general assembly should be held yearly once, whereat were to be present the governor and council, with two burgesses from each plantation, freely to be elected by the inhabitants thereof, this assembly to have power to make and ordain whatsoever laws should by them be thought good and profitable." The first Council of Burgesses met in Jamestown in 1619. In 1622 the colonists suffered severely from a well concerted attack by the Indians and, in the fierce war that followed, nearly 2000 colonists were killed. In 1624 King James dissolved the London Company and took the government of Virginia into his own hands, but continued the system then in use, himself appointing a governor and council for the colony and allowing the people to elect the House of Burgesses, thus modeling the colonial organization very closely after the British home government, with a Governor representing the king, a council appointed by him and a popular body chosen by the people. This system continued down to the time of the revolution.

The next charter was granted by James I in 1620, as the charter of the second colony, covering the country from the fortieth to the forty-eighth parallels of north latitude, to be called New England, and created a body politic and corporate in the town of Plymouth, county of Devon, to consist of forty persons and no more "for the planting, ruling, ordering and governing of New England in America" and names forty persons, including many of the nobility, as the members of the first council established at Plymouth, with power to fill vacancies thereafter occurring. The corporate name was "the Council established at Plymouth in the county of Devon for the planting, ruling and governing of New England in

America" and they were given the usual powers of succession, to acquire and hold property in England and elsewhere, to sue and be sued and use a common seal. They were given authority to admit such persons into New England as they should see fit, to allow them to have and possess such lands as they should think fit, to trade there, to name governors, officers and ministers to attend to the business of the corporation and also for the government of the colony, to establish and ordain all manner of laws, orders and directions, fit and necessary for the government of the colony and plantations and on the high seas going and returning, as they should think for the good of the adventurers. Full liberty of emigration was allowed to all subjects with their goods without paying any custom or subsidy for seven years, and no customs or subsidies were to be collected in New England for twenty-one years, except only £5 per cent on all goods imported into England, with privilege then to export to other countries. Leave was granted the council to divide the land among the colonists and make wars on any enemies interfering with their possessions. All other subjects were prohibited from trading with the colony without license from the council, and the council were authorized to seize any goods brought into the colony or taken out without leave. All subjects inhabiting New England and their children were guaranteed the rights of Englishmen. The religious idea finds frequent expression and the exclusion of persons "suspected to affect the Superstition of the Church of Rome" was enjoined, and none were to be permitted to go there but such as should take "the oath of Supremacy." This charter is very long and verbose. The first actual settlement in the territory named in it was made by a company of Puritans, who had emigrated to Holland and then returned to England with a view to going thence to America. They obtained a license from the London Company, but in the name of a person who did not accompany them, and so in fact went without any leave from the king or either of his chartered companies. Unlike the first settlers of Virginia, they took their families with them. Before landing at New Plymouth

they entered into the following rather novel covenant. "In the Name of God, Amen. We whose names are underwritten the Loyal Subjects of our dread Sovereign Lord King James . . . Having undertaken for the Glory of God and advancement of the Christian faith, and the Honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia. Do by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better ordering and preservation and furtherance of the ends aforesaid: And by virtue hereof do enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Officers, from time to time, as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due Submission and Obedience. In witness whereof we have hereunto subscribed our names at Cape Cod the eleventh of November in the reign of our sovereign lord King James of England, France and Ireland the eighteenth and of Scotland the fifty-fourth. Anno domni 1620." To this instrument forty-one names were signed. Though they landed in the winter and endured great hardships, the colony maintained its ground and its descendants have played leading parts in subsequent American history. Eight years later two hundred English Puritans settled at Salem. On March 4, 1629, Charles I issued a new charter, granting to Sir Henry Roswell and twenty-five others named, and their heirs and assigns, certain lands along the coast of Massachusetts and extending to the "South Sea." The parties named and their associates were made a corporation under the name of "the Governor and Company of the Mattachusetts Bay in Newe England," with the usual corporate powers to have a Governor, Deputy Governor and eighteen assistants "to be from tyme to tyme constituted elected and chosen out of the freemen of saide Company." The Governor was given authority to assemble the company and hold a court or assembly once a month or oftener at their pleasure, at which seven assistants, with the Governor or Deputy Governor, should be a sufficient number to transact business, and that a

general court of the Company should be held four times a year, at which new members might be admitted, officers elected and laws and ordinances enacted for the good of the company and the government of the plantation, not repugnant to the laws of England. The Governor, Deputy Governor and Assistants were to be chosen by the general assembly annually. The other provisions of this charter are in substance a repetition of those contained in the New England charter, and all the privileges given by that charter are continued in this. The next year the company moved over to the colony, taking more than a thousand colonists along. In this manner the governing body of the colony came to be identified with the colony itself, and a self-governing state was established on the American continent, which not only chose its representative assembly, but also its Governor and council and all officers under them. The settlement of Massachusetts proceeded rapidly from this time and, by 1640, many towns were planted. Each town held its meetings at which all freemen voted for magistrates and delegates to the General Court. Education was recognized as a function of the state, every township was required to maintain a school for primary instruction, and every town of one hundred householders a Latin and Grammar school. Harvard College was established by the General Court in 1638, and in 1639 the first printing press was set up. Thus in the brief period of twenty years a flourishing little state had been established on a comparatively barren portion of the American coast.

In 1609, prior to the landing of the Pilgrims, the Dutch had sailed up the Hudson River as far as Albany. About four years later they established a trading post on Manhattan Island, and in 1614 a fort was built by them at Albany. In 1629 the Dutch West India Company was formed and emigrated to New Netherlands, as their possessions near the Hudson River were called. They encouraged immigration to their colony and gave great tracts of land to such as should bring out colonists. These grants were the foundations of the great landed properties of the Dutch patroons. The Dutch planted colonies on the Connecticut and in 1654 took from the Swedes

the colony they had established on the Delaware. In 1664 the English took New Amsterdam and changed its name to New York, and all the Dutch possessions there were ceded to England at the termination of the war between these countries.

Charters to lands they neither owned nor occupied were lightly made and easily disregarded by kings, who ruled by right divine, and who in contemplation of law could do no wrong. In 1632 Charles I, notwithstanding the fact that the territory was included in the Virginia charter, gave Maryland to George Calvert, Lord Baltimore, but he having died before delivery of the charter, another was made to his son, Cecil Calvert, a Catholic. The charter was written in Latin and differed from prior charters in the particulars, that it was for a definite territory, to a single individual, of which he was made "*verum dominum et Proprietarium*" subject only to his fidelity and allegiance to the king, with full power to govern the province and make laws, with the consent of the freemen or their representatives. Religious liberty was guaranteed and the usual permission of subjects to emigrate, fight their own battles and trade with the mother country. Under the liberal policy of Calvert, the colony increased rapidly, drawing many settlers from the earlier colonies.

Without any charter or other express license from the king, in 1633 a company from Plymouth established a trading post at Windsor on the lower Connecticut River. Two years later settlements were made at Hartford, Withersford and Springfield. Other towns were rapidly started along the sound by Englishmen.

The first American constitution was made by the Connecticut colonists and bears date Jan. 14, 1638. It provides that all freemen who inhabit the country and take the Oath of Fidelity shall be entitled to vote, that deputies shall be chosen at town meetings, each voter writing the names on a piece of paper and delivering it to persons chosen to count the votes, that the deputies shall meet in a general court twice a year, on the second Thursdays in April and September. The first session was called the court of election, at which a governor

and such magistrates, not less than six, and other officers as might be deemed necessary, should be chosen by the deputies by written ballot. At each court the deputies were authorized to make laws and dispatch the public business, the Governor presiding and having a casting vote in case of a tie. The Governor was required to be a former magistrate and a member of some approved congregation and could be elected only once in two years for a term of one year. In calling the General Court together the Governor issued his summons to the constables of the towns, who notified the members, and notices of town meetings were also given by the Constables. The General Court could only be adjourned by a majority vote, and a majority of the members could call a session if the Governor refused to do so when necessary. This early constitution is notable as furnishing, in rough outline, the leading principles of the constitutions of the future American States. The sovereignty, although in terms vested in the general court, was in fact in the freemen of the colony, who expressed their will through the medium of the ballot and annually appointed the members of the General Court, which was the active governing power.

Tolerance of religious ideas among the Puritans was tolerance of their own beliefs only. No people ever had a more bitter hatred of what they regarded as impure religions. In November 1635 the General Court of Massachusetts sentenced Roger Williams to banishment for his religious and political opinions, and in June of the following year he and a colony of others settled at Providence, Rhode Island, on lands granted him by the chiefs of the Narragansett Indians. Other settlements in that neighborhood soon followed. In 1643 the Earl of Warwick, as Governor-in-chief, and others as commissioners for the government of the provinces in America, executed an instrument reciting the settlements above named and the purchase of lands from the Indians and granting to the inhabitants of the towns of Providence, Portsmouth and Newport a free and absolute charter of incorporation under the name of the Incorporation of Providence Plantations in "the Narragansett Bay, in New England together

with full power and authority to rule themselves, and such others as shall hereafter inhabit within any part of the said tract of land, by such a form of civil government, as by voluntary consent of all or the greater part of them, they shall find most suitable to their estate and condition," provided their laws should be conformable to the laws of England, as nearly as might be, and reserving power to regulate their relations with the other colonies. This was in the reign of Charles I after the Long Parliament came into power. The instrument was not in form a royal charter but was signed by Robert Warwick and ten others. No other charter was issued till after Cromwell's time and the restoration of Charles II. In 1662 Charles II issued a charter to John Winthrop and eighteen others by name and all such others as are or shall be admitted free of the colony, to be a body politic and corporate under the name of Governor and Company of the English Colony of Connecticut in New England in America, to have a Governor, Deputy Governor and twelve assistants elected by the freemen of the company. Winthrop was appointed Governor and twelve others as assistants, to hold till their successors were chosen. The charter contains the usual provisions of prior charters with reference to trade, liberty of subjects to settle there and preservation of their rights as English citizens, with leave to fight their own battles. It grants them the lands of Connecticut and contains no reservation to the crown of power to appoint any officers for the colony. In the next year he gave a charter to William Brenton and twenty-five others by name, including Roger Williams, and all such others as now are or hereafter shall be admitted and made free of our "collonie of Providence. Plantations to be a corporation under the name of The Governor and Company of the English Colony of Rhode Island and Providence Plantations in New England" and to have a Governor, Deputy Governor, ten assistants and a general Assembly to be elected by the freemen of the colony, vested with full governmental authority. The other provisions are substantially the same as, though not identical with, those in the charter of Connecticut. This charter remained the con-

stitution of Rhode Island, not only through the revolutionary war, but till 1842. In the same year Charles II granted a charter of an altogether different character, to Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkeley and Sir John Colleton, for the territory from the north end of Lucke Island in the south Virginia seas and within thirty-six degrees N. L. and to the west as far as the south seas, southerly as far as the river St. Mathias, which bordereth on the coast of Florida within thirty-one degrees N. L. and so west as far as the south seas, with the patronage and advowsons of all churches as amply as any bishop of Durham ever held, and as true and absolute Lords Proprietors of all the lands, saving only faith and allegiance to the king, for a yearly rental of twenty marks and one-fourth of all gold and silver ore. The territory was incorporated into a province, named Carolina, and the proprietors were given full power to appoint all necessary officers and govern the province with the advice and consent of the freemen of the province or their delegates or a majority of them. The proprietors were also given power to make ordinances, without assembling the freemen, and to establish ports and collect customs for their use, to confer titles of honor, to declare martial law in case of sedition, and to organize armies and fight enemies. In 1665 a second charter was granted, extending the boundaries to Latitude twenty-nine degrees. Under this charter a most peculiar scheme, called The Fundamental Constitutions of Carolina, was framed in 1669 by John Locke, containing 120 sections. It provided that the eldest lord proprietor should be called Palatine and the others Admirals, Chamberlains, Chancellors, Constables, Chief Justices, High Stewards and Treasurers. The province was to be divided into counties, each county into eight seigniories, eight baronies and four precincts and each precinct to have six colonies. An hereditary nobility was to be created, styled landgraves, casiques and barons, and provisions calculated to keep the great estates together were made. This instrument is rather curious than important, as it was never executed and

left no marked impression on future institutions. The spirit of favoritism was further exhibited by Charles in 1664 in the grant to his brother James, Duke of York, of Maine (which had been granted to Ferdinando Gorges in 1639), Long Island, the country between the Connecticut and Hudson rivers and from the west side of the Connecticut river to the east side of Delaware Bay, the islands of Martins Vineyard and Nantuckett, with "full and absolute power and authority to correct, punish, pardon, govern and rule all such of the subjects of us our heires and successors as from time to time adventure themselves into any of the parts or places aforesaid according to such lawes ordinances, direcons and instruments as by our dearest brother or his assigns shall be established and in defect thereof in cases of necessity according to the good direcons of his deputyes, commissioners, officers and assigns" but as nearly as may be according to the laws of England and subject to an appeal to the king. A yearly rental of forty beaver skins, when demanded, was reserved. No mention is made of any system of popular representation in the government of the grant, but full and arbitrary authority is given to rule with the usual privilege of subjects to emigrate, etc. In 1629 The New England Company made a grant of lands between the Merrimac and Piscataqua Rivers to Captain John Mason, and this grant was confirmed by another by the council "assembled in publick court" which gave the name of New Hampshire to the district granted. In 1680 Charles II issued a commission restraining the assembly of Massachusetts from exercising authority over New Hampshire and providing a President and council of nine, to be a court of record for the administration of justice in New Hampshire, from which an appeal in matters involving £50 or more might be taken to the king. The laws of England were to be followed as far as applicable and a general assembly was to be called with legislative power.

The next charter was that issued to William Penn in 1681 for Pennsylvania. He was made the proprietor with full power to govern the colony "by and with the advice assent and approbation of the Freemen of said Country or the

greater parte of them, or of their Delegates or Deputies," to be assembled as Penn might direct. The only reservation to the crown was fealty and one-fifth the gold and silver ore. A transcript of all laws passed was required to be transmitted to the privy council and might be annulled within six months, otherwise to stand. Power was conferred to establish ports of entry and collect Customs and Subsidies. An agent or attorney resident at London was required to be appointed and reported to the Clerk of the Privy Council, to appear in the courts at Westminster to answer for misdemeanors of Penn, his heirs or assigns. Full power was conferred on Penn to convey the land as he might see fit, notwithstanding the provisions of the statute of "*Quia Emptores Terrarum*." Penn and his grantees were authorized to erect manors and hold Courts Baron thereon. The charter further provides, "That Wee our heires and Successors shall at no time hereafter sell or make or cause to be sett, any imposition, custome or other taxation rate or contribution whatsoever, in and upon the dwellers and inhabitants of the aforesaid province, for their Lands, tenements, goods or chattels within the said province, or in and upon any goods or merchandise within the said Province or to be laden or unladen within the ports or harbours of the said Province, unless the same be with the consent of the Proprietary, or chiefe governor, and assembly or by act of Parliament in England." No provision similar to the foregoing appears in any prior charter. It will be noticed however that this authorizes taxation of the colony, either by the consent of their representatives or of Parliament.

William Penn was a remarkable man, a favorite of the king, though subjected to persecution because a Quaker in faith. Born in the privileged class, he was an ardent reformer. He kept in mind the great truth, so constantly disregarded by statesmen, that peace and social order are mainly dependent on confidence in the justice and friendship of those concerned, rather than on superior force. Though given a proprietary charter to the whole territory by the English king, he respected the rights, not only of the Swedes and Dutch who had already made settlements there, but of the

Indians as well, from whom he obtained by treaty the right to make settlements in their country. He drew up and published on July 11, 1681 "Certain conditions or concessions agreed upon by William Penn, Proprietary and Governor of the Province of Pennsylvania, and those who are the adventurers and purchasers in the same province" in which provisions were made with reference to the sale of the land and the laying out of towns, with various regulations calculated to secure just treatment of the Indians both as to occupancy of land and trading. In 1682 he published his "Frame of Government of Pennsylvania" with a preface in which he expressed briefly his views on the principles of government and said among other things:

"I do not find a model in the world that time, place and some singular emergencies have not necessarily altered; nor is it easy to frame a civil government, that shall serve all places alike."

"Thirdly, I know what is said by the several admirers of monarchy, aristocracy and democracy which are the rule of one, a few, and many and are the three common ideas of government, when men discourse on the subject. But I chuse to solve the controversy with this small distinction and it belongs to all three. Any government is free to the people under it (whatever be the frame) where the laws rule, and the people are a party to those laws, and more than this is tyranny, oligarchy or confusion."

"But lastly, when all is said, there is hardly one frame of government in the world so ill designed by its founders, that in good hands, would not do well enough; and story tells us, the best in ill ones, can do nothing that is great or good, witness the Jewish and Roman states. Governments like clocks go from the motion men give them, and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men, than men upon governments. Let men be good, and the government cannot be bad; if bad, let the government be never so good, they will endeavor to warp and spoil it to their turn."

"That therefore, which makes a good constitution must keep it, viz., men of wisdom and virtue, qualities, that because they descend not with worldly inheritances, must be carefully propagated by a virtuous education of youth."

It would be difficult to compress more political wisdom into a single sentence than is contained in the last one quoted. The general frame of his government provided for a proprietary Governor, a provincial council of seventy-two, and a General Assembly, elected by the freemen of the province; the council to be divided into four committees charged with oversight of different matters, one of which was "a committee of manners, education and arts, that all wicked and scandalous living may be prevented." A body of laws, also prepared in England, in forty sections, was attached to the frame of government.

The settlement of the colony proceeded very rapidly, and during the year 1682 about 2,000 persons, mostly Quakers, came in. Penn obtained from the Duke of York a grant of the Delaware country and a release of his claims on Pennsylvania, and went over to America. He divided the country into six counties and summoned the first general assembly at Chester in December 1682. A modified frame of government reducing the number of members of the council to eighteen and fixing the representation in the assembly at thirty-six—six from each county—was signed by Penn and accepted by the members of the Council and Assembly on 2-2-1683. The active governing power was vested in the Proprietary Governor and council, by whom laws were prepared and submitted to the assembly for approval.

After the accession of William and Mary to the British throne, Benjamin Fletcher, Governor of New York, was commissioned Captain General and Governor of Pennsylvania, but the government was restored to Penn, who appointed William Markham, Governor. A still further modification of the frame of government was deemed necessary and adopted by the Governor, Council and Assembly. The Council was to consist of two persons chosen from each county and the Assembly of four from each county. The qualifications of

electors were that they must be free denizens, twenty-one years of age and have fifty acres of land, ten of which were "seated and cleared," or £50 clear in other property and have resided two years in the province. Much space is given to "attests" to be taken by public officers in lieu of official oaths. The principle that the legislative bodies should be the sole judges of the election of their members was incorporated, and members of the Assembly were allowed four shillings per day, the speaker and members of the Council five shillings and all of them two pence per mile for traveling expenses going and coming. Bonds from sheriffs and clerks were required. Two-thirds of the members of the Assembly were required for a quorum on the passage of a law or judgment of impeachment. The executive power was vested in the Governor and Council and also the management of the treasury, from which no payments were allowed, except "what hath been agreed upon by the Governor, Council and Assembly." Legislation might be initiated by the Governor and Council or the representatives of the freemen in the Assembly might propose such laws as should be agreed on by a majority of them. The last and final act of constitutional legislation by Penn was a charter given by him and accepted by the Council and Assembly on Oct. 28, 1701. It refers to the various grants to him, to the prior frames of government, states that they were found in some parts not suitable to present conditions, and contains eight articles. The first is a strong guaranty of religious liberty, and allows persons to hold office who take the attests provided for in existing laws, without oath. The assembly was to consist of four from each county with power to choose a speaker and their other officers and be judges of the qualifications and elections of their members, appoint committees, prepare bills and impeach criminals. The freemen in each county at the time of electing members of the assembly were authorized to nominate two persons for each of the offices of sheriff and coroner, from whom the Governor could appoint one each for three years, "if so long they behave themselves well." It was further provided "That all criminals shall have the same privileges of Witnesses and Council as their Prose-

cutors"; that persons licensed to keep tavern must be recommended by the Justices of the county, and that the estate of a suicide should go to his wife and children. In the closing paragraph it provides for a separation of Delaware from Pennsylvania in case either of them so desires within three years, and guarantees the liberties of the charter to each. This separation took place and Delaware was organized as a separate colony under the charter. This charter does not cover specifically nearly so many matters as the prior frames of government, but seems to have been intended to provide for a few matters then uppermost in his mind. It remained in force until the revolution, as the fundamental law of Pennsylvania.

Among the most conspicuous characteristics of the Puritan settlers of New England were religious intolerance and a determination to manage their own affairs without any interference from England. Quakers seem to have fared worst of all and some of them were executed. The settlers of New England suffered very little from the Indians till King Philip's War, which broke out in June, 1675, and finally involved the settlers in a fierce struggle with the confederated tribes of New England. About 600 whites perished, but the Indian tribes were nearly exterminated. Parliament had before that time levied duties of tonnage and poundage on the trade of the colonies and began to look to them as important possessions. The colonists fought the Indians in King Philip's War without the aid of the mother country, but this served rather to call attention to their power and independent spirit than to ingratiate them with the King. In 1683 he thought fit to take away their privileges, and in order to do so made use of the court of King's Bench, which issued a writ of *quo warranto* to the Governor and Company of Massachusetts, on which, at the Trinity Term 1684, a judgment was entered, "that the letters patent and the enrollment thereof be annulled." This was but one of the many instances of the subserviency of the judges to the power that appointed them. James II sent Edmond Andros as Governor to Massachusetts where he arrived in 1686 but, on the overthrow of James and

the accession of William and Mary, the people of Massachusetts rose in arms, imprisoned Andros and elected their own governor, assistants and deputies. In 1691 William and Mary issued a new charter, reciting the issuing of the former charters and the settlement of the colonies thereunder, and that at Trinity term 36th Charles II, a second judgment was given in our Court of Chancery then sitting at Westminster upon a writ of *Scire Facias* against the Governor and Company of the Massachusetts Bay in New England that said letters patent be cancelled, and then "wills and ordeynes" "that the Territories and Collonyes commonly called or known by the Names of the Colloney of the Massachusetts Bay and Collony of New Plymoth, the Province of Main, the Territorie called Accadia or Nova Scotia and all that tract of land lying betweene the said territories of Novo Scotia and said province of Main be erected united and incorporated into one reall Province by the name of Our Province of the Massachusetts Bay in New England" and then grants to them the land by particular boundaries, reserving one-fifth the gold and silver ore; preserving to private persons, towns, villages, colleges and schools the lands held by them under prior grants. The administration of the colony was placed under a Governor, a Lieutenant or Deputy Governor and a Secretary of the Province to be appointed by the king, twenty-eight assistants and a general court or assembly made up of two freeholders, elected from each town by freeholders owning land worth forty shillings per year or other property worth forty pounds. The twenty-eight councillors were to be chosen by the Assembly. The appointment of judges, sheriffs, marshals, justices of the peace and other officers was entrusted to the Governor with the advice and consent of the Council. Oaths of allegiance were required from all officers. The inhabitants of the province and their children were guaranteed the liberties of English subjects with liberty of conscience (except papists). Full governing power was conferred on the General Court, which consisted of the Governor, or Deputy, the Council and Assembly, with authority to establish courts of general jurisdiction, subject to an appeal to the king in

council in civil causes involving £300. The governor was given a veto on legislation, and all acts of the Assembly were required to be transmitted to the king, who reserved the power to annul them within three years.

A controversy having arisen with reference to the right of the Assembly to choose its speaker, in 1726 George I issued an explanatory charter giving the Assembly the right to elect, but the Governor might disapprove the choice, when a second election was required. The assembly was given power to adjourn, not exceeding two days, without the consent of the Governor, but the Governor was authorized to adjourn, dissolve and prorogue it. These charters seriously abridged the rights of the colonists to govern themselves and were never satisfactory to the people.

New Jersey, as we have seen, was included in the grant to the Duke of York with Maine and New York. In 1664 he granted New Jersey to Lord John Berkeley and Sir George Carteret. The government of the colony was then regulated in accordance with "Concessions" made by the Lords Proprietors of the province, which were amended from time to time till 1702, when the proprietors surrendered their rights to the crown and it was then governed as a royal province.

The territories of both North and South Carolina were included in the Carolina proprietary grants, and no separate royal charter was ever issued for either.

The last Royal charter issued was by George II in 1732 to John Lord Viscount Percival and nineteen others named, who were made a corporation under the name of The Trustees for establishing the colony of Georgia, in America, with power to hold land in England of not over £1,000 yearly value. Percival was made President, with a council of fifteen to be increased to twenty-four. The charter grants seven-eighths only of the lands from Savannah River to the Altamaha and westerly from the heads of the rivers to the south sea, with power to sell and convey the same to purchasers, who were to be required to pay the king four shillings yearly per 100 acres, beginning ten years after the sale. The corporation was given power to make laws and appoint officers for the territory for

twenty-one years, to be approved by the king in council. The appointment of officers and employees of the corporation from its members was prohibited, and the corporation was also prohibited from selling land to its members and from selling over 500 acres to one person. The governor of the colony was to be appointed by the council of the corporation, subject to the approval of the king. After twenty-one years the government was to be such as the king should ordain. This being the nearest colony to the Spanish settlements in Florida, it was not long till hostilities broke out between the English settlers of Georgia and the Spanish of Florida. Probably owing to this situation and hostilities with the Indians, the settlement of Georgia progressed slowly and, at the end of the time limited in the charter, the king assumed the government through his appointees.

In some respects the early settlement of America resembles that of England by the Jutes, Angles and Saxons. Both were popular movements for permanent change of habitation, by which the natives were driven out to make room for the invaders. In both the invaders fought their own battles and made headway as best they could without the backing of the military force of the mother country. In other respects there were marked differences. The Saxons met a people of the same race, not greatly their inferiors in any respect, and on the whole more peaceful and civilized than themselves. To reach England but a short voyage was involved, and the invaded country was at least under as good tillage and as well supplied with domestic animals as that the invaders came from. The settlers of America found a strange race of indolent hunters, wholly unaccustomed to European modes of life. Though the early settlement of Virginia was attended with heavy losses from Indian hostility, the general rule was that there was comparatively little warfare between the English settlers and the Indians prior to the breaking out of hostilities between France and England in 1689. In New England there was peace with the natives till 1636, when the Pequot Indians killed a trader on the Connecticut River, for which in that and the following year the tribe was nearly exterminated.

The whole tribe was treated as responsible for the murder, of which most of them were of course entirely innocent. King Philip's War in 1675 was a much more serious affair and resulted in considerable loss to the whites, but this came fifty-five years after the landing of the Pilgrims at Plymouth, and resulted, as did all other wars with the natives, in their final crushing defeat. In Pennsylvania just treatment of the Indians secured peace for a time. The Dutch in New Netherlands had trouble with them mainly because of cruel treatment. The growth of ideas of self-government and real independence of the home government was entirely natural and a logical sequence of the system followed. While the Plymouth colony made its start without any royal sanction, home corporation or proprietary founder, the general rule was that a company was first formed in England to promote the founding of a colony or a single grantee from the crown undertook the task. The first steps taken in England were by private persons who raised the necessary funds, procured the ships and induced hardy and resolute men and women to make the long voyage, and settle in the strange land. The chief motive of the promoters and proprietors was private gain. The gold and silver brought over by the Spaniards from Mexico and South America excited the cupidity of the English kings, who expected to find these metals in their colonies also. It is a noticeable fact that in all charters, except that for Georgia, there is a reservation of a share of the gold and silver ore, but not of rental of the land. The true wealth of the new country was not apprehended, but the semi-barbaric notion of the value of so-called precious metals was uppermost in the minds of the English kings. The value of the food supply and other usable commodities, now obtained in such great abundance from the United States, was regarded as of far less importance than gold and silver. The gathering into the ships of the bold spirits who came across the ocean, was the primary work of founding the colonies. No great number ever came at one time or at the instigation of any one person or corporation, though several shiploads sometimes came together, and others followed at longer or shorter in-

tervals, according to circumstances. No powerful home corporation like the East India Company was evolved as a result of these operations. The settlers, once landed in America, were from the necessities of the situation forced to shift for themselves. The Virginia and Massachusetts colonists had to treat with the Indians on their own authority, and to organize their fighting forces whenever hostilities were threatened. This was true everywhere in the parts of America settled by the British. It is significant that, in all the charters from the king, express authority is given the grantees to organize armies and make war to maintain possession of the territory granted. The sovereign did not assume the function, usually so jealously guarded, of directing the military forces of the colonies, but left that to the proprietors or colonists themselves. They were without any other means of supporting their forces than such as they contributed for that purpose. Now the primary functions of all the governments of the earth, from their inception, have been the gathering and commanding of armies and the raising of supplies for them. Even at this day the principal functions of the governments of Europe are connected with the organization and maintenance of military forces. By these charters such functions were transferred to private hands. The effect of this policy it would seem might easily have been foreseen. The colonists found in America illiterate savages, indolent and filthy, yet exceedingly proud of their independence and individuality. The Indian owed allegiance to no ruler. He followed the chief of his choice. He roamed where he pleased through the forest. He paid no tax, he served no master. He was slothful and improvident to the last degree, and this, rather than wars, accounts for his destruction. In the long course of time the natural process of evolution exterminates the warrior, the idler, the improvident and filthy. The warrior, though he may kill many, kills warriors mostly and is himself the target for his adversaries. The idler and the wasteful man or tribe sooner or later perish from famine. The filthy fall a prey to contagious and epidemic diseases, which spread and fester under conditions so favorable. Thus the Indian, partly

by war, but more by famine and disease, wasted away before the advancing whites. His powers of organization were limited. Confederacies of tribes were effected at times, but hunters, accustomed to supply their daily wants from the chase, could not organize and feed an army. An Indian raid came like a thunder storm and quickly passed away. A great army of savages, if once drawn together, would necessarily perish from want of supplies. To subsist on forage they must scatter. Thousands of years of warfare in Europe have taught the importance of supplies of food and munitions of war in order to use an army once organized. The colonists came with knowledge of the advantages of organization, but were largely of such hardy and independent spirits that they often suffered through their inclination to act separately. The notions of social order, government, property rights, and laws, which they brought with them from the mother country, led all the colonies to organize such governmental agencies as appeared to them necessary in their situation. The Mayflower Pilgrims, as we have seen, signed a compact before landing. The first permanent colony of Virginia followed the leadership of Captain John Smith. As the colonies increased in size and settlements multiplied, it was found impracticable for all the settlers to meet and consult, so delegates were chosen from each town or district to represent it in a general meeting. The organization did not proceed exactly along lines subsequently maintained, but as time wore on the advantages of a wider and wider combination to insure concert of action against common foes by all the English colonies was more and more felt. In the early days the home government paid little heed to conditions in America. There was often much friction between governors sent out from England and the colonists. Scions of nobility, reared in England, were often sent over, who had no conception of the needs of the colonies they came to govern. The result was, in most if not all instances, that the colonists refused to be guided by them and sooner or later forced their recall. Popular institutions took their most advanced form in New England, where the town meeting, into which all the freemen of the town gathered,

was the governmental unit. These units acted in concert, through an Assembly of delegates chosen by each, who in turn selected the executive officers. The freemen in town meeting regulated all the concerns of the town, leaving to the assembly only matters of general concern. This was very similar to the ancient Saxon system at the time of the first invasions of England, except that the Saxons had no representative bodies. In the early days of New England there were several separate colonies in each of the small territories of Massachusetts, Connecticut and Rhode Island, and the subsequent consolidations were mainly the work of the colonists, effected through new royal charters, obtained on their petitions.

So early as May 19, 1643, an alliance was formed by the Plymouth, Massachusetts Bay, Connecticut and New Haven colonies for matters of common concern. The Indians, the French on the north and Dutch on the west, whose hostility they feared, led them to join for their defense. They entered into a written compact, embodied in a preamble and eleven articles. At this time these colonies are said to have had an aggregate population of about 24,000, living in thirty-nine towns, and took the name of the United Colonies of New England. The affairs of the confederacy were placed in charge of two commissioners from each colony, but each colony remained independent as to all its local affairs. This confederacy continued in existence for a number of years. As the colonies grew in population and came to have more intercourse with each other, the idea of joining forces for their mutual protection gained force.

The most powerful enemy against whom they had to contend was not the savage natives, but the civilized French, who, having possession of Canada on the north and Louisiana in the southwest, formed a chain of posts along the Great Lakes, and the Ohio and Mississippi Rivers to connect them, and constantly threatened the English settlements from the rear. Each nation sought alliances with the natives. The French were rather the more successful and attached the powerful tribes of the north to their interests. The British however

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secured the friendship of the Five Nations of New York. Numerous conferences were held, not only by the Governors of New York, but by representatives of other states with the chiefs of these powerful tribes. So early as 1684 one of these conferences was held at Albany, at which Virginia, Maryland, Massachusetts and New York were represented. It was deemed a matter of great importance to secure and hold the friendship of these Indians, who occupied the border region between the English and French settlements. Similar conferences, though with a varying representation of colonies, were held in 1690-1694, 1722-1748 and 1751. In 1698 William Penn gave out a plan for the union of the American colonies, but nothing came of it.

The attempts to govern the colonies from England proved, in nearly every instance, a failure because of a want of knowledge of the situation of affairs in America, and especially of a lack of understanding of American character, which generation by generation developed under conditions very dissimilar from those existing in England. Most of the country had been given out to great landholders, but the actual settlers were not of the aristocratic class. The population was almost entirely rural, but it was not an English rural society. Though great proprietors sought in most of the states to establish a rent paying tenantry and succeeded in doing so in some parts, the general rule was that the settlers soon became independent freeholders. This was the case especially in New England. where, except in Maine and New Hampshire, there was no great lord proprietor. Clearing forests, building houses in the wilderness, defending against Indians and hunting wild beasts developed not merely a strong, hardy and courageous race but a self-reliant one. The government of Great Britain was far away and unsympathetic. In their local gatherings, and even in meetings from the various colonies, men came together who were confronted with similar difficulties and readily understood each other's wants and abilities. Nearly all the governors sent over from England came imbued with ideas of kingly prerogative. For these the colonists cared little, because they served no purpose among them. Although

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from the conclusion of peace with the Dutch in 1664 till the final revolt of the colonies, the English held undisputed possession of the whole coast from Maine to Florida, no comprehensive plan was formulated by the king or parliament for governing the country as a whole, nor was there any general system applied alike to all the colonies. Each claimed its special privileges under its peculiar charter, and above all the settlers claimed the right to meet their difficulties in their own practical ways.

The colonists brought with them their English traditions and ideas of right. The common law of England, with some modifications by legislative enactment, was administered in the courts and by the same system of practice, in the main, that obtained in England. In Massachusetts religious zeal was carried to extremes of intolerance, and Quakers and others were even hanged for heresy. The strangest exhibition of judicial barbarity, aside from this, was in the trial and execution of poor people, mostly women, for witchcraft. It is exceedingly difficult to understand how such practical and shrewd people as the Puritans could have believed in the existence of a crime of this kind. In their overstrained morality they became not a little hard and cruel. It happened with them, as with so many others, that, in their intense hatred of imaginary vices, they committed real crimes against the innocent. Charity and compassion, the expressions of a loving spirit, were not general among them. Their great strength lay in their industry, thrift and the education of their children. Study and work, under rigid and gloomy discipline, were the rule. The colonists early gave much attention to learning. The first free school in America was established in Charles City Virginia in 1621. Many others were established throughout New England, where it was deemed of especial importance that all should diligently study the Bible and be governed by its teachings. Free schools were opened in Maryland in 1704 and primary education of the young was far more general throughout the colonies, from the earliest days, than in the mother country. Attention to higher education was also given at a time when the settlements were very

sparse and the people very poor. Of the great universities, Harvard was established in 1638, William and Mary's 1693, Yale 1716, Princeton 1746, Columbia 1754, University of Pennsylvania 1755, Brown 1764. In their beginnings all were small and poor but they soon exerted powerful influence.

While the colonists received little aid from the king in their struggles with the natives, king-craft in Europe repeatedly exposed them to the horrors of warfare with Europeans and savages. King William's struggle with France for his Dutch possessions involved the colonists from the two countries in warfare with each other, as well as with the savages, from 1689 to 1697. The war of the Spanish succession in the reign of Queen Anne, from 1702 to 1713, caused a similar state of hostilities in America. War with Spain from 1739 to 1742 occasioned severe fighting with Spanish and Indians in the Southern Colonies, and the claims of King George's family in Germany caused war with France again from 1744 to 1748. It is impossible to tell just how many people were killed in the colonies by Indians or how many by the French and Spanish, but it is probable that far more than half the butcheries of English colonists were caused directly by the policy of the so-called civilized governments of Europe, and that, if left to deal with the natives in their own way, without any interference from without, the colonists would have suffered but little from them.

Very much has been said and written about the hardships and dangers endured by the early settlers, and especially concerning the horrors of Indian warfare, yet the real truth appears to be that America was a far more safe and happy place to live in during the seventeenth and first half of the eighteenth centuries than Europe. In 1751 Franklin estimated that there were about 1,000,000 English souls in America, but that not more than 80,000 had been brought over by sea. Natural increase went on, if this be so, at such a rate that in 144 years the population had been multiplied by twelve and one half. But only a small part of the 80,000 came so early. While this remarkable increase of population occurred in America, no European state of importance made an increase

nearly so great. Definite statistics are not to be had on the subject, but the population of England probably did not double in the whole period, and may not have increased more than fifty per cent. Thus it is shown that conditions were more than ten, perhaps more than twenty, times as favorable to the multiplication of the species in America as in England, during the very period so often mentioned as one of such excessive danger and hardship. War, famine, hard laws, bloody courts, selfish and cruel kings and councillors, are largely responsible for the unfavorable results in Europe. Ample lands with liberty to make use of them as best they could, and comparative exemption from the burdens of European militarism and injustice were the leading causes of American increase.

When the war, known in America as the French and Indian war and in Europe as the Seven Years' war, broke out, the American colonies had become important factors in the contest. Before the formal declaration of war collisions had occurred in the Ohio valley, claimed by both Virginia and the French. The British ministry perceived the necessity for concert of action among the colonial forces. Early in the spring of 1754 the ministers sent notice to the colonial governments, that it was the desire of the king that they should oppose the encroachments of the French by force, and recommended that they should send delegates to a general convention, at Albany, to form a league with the Six Nations and provide for their own united action. Maryland, New York, Pennsylvania and the New England colonies responded. Benjamin Franklin was a delegate from Pennsylvania to this conference. He there proposed a federal league, to be authorized by an act of Parliament, with a president appointed by the king, a grand council of members chosen by the provincial assemblies to the number of not less than two nor more than seven from each colony; the executive power to be lodged in the president and the legislative in the council and president. This government was to have power to declare war, make peace, conclude treaties with the Indians, regulate trade with them, purchase their lands, raise troops, arm vessels, provide

for the general safety and impose taxes for these purposes. The laws enacted were to be sent to England for the approval of the king, who might disallow them within three years. Naval and military officers were to be nominated by the president and approved by the council, and civil officers were to be nominated by the council and approved by the president. This plan met with opposition from both sides. The colonists thought it conferred too much power on the king, the British government that it gave the representatives of the people too much power. The general idea was not novel, it was merely an extension of the system then prevailing in most of the colonies to a larger organization, including them all, with powers limited to matters of general concern. The delegates to the convention were unanimous in the opinion that union of the colonies was essential to their safety, but were unable to agree on any plan to effect it. Franklin's plan was about midway between the extremists but satisfactory to neither side. Though the formal declaration of war was not published in England till May 17, 1756, fighting had been going on in America for nearly two years, and Braddock had sustained his disgraceful defeat the preceding year. In the spring of 1756 the governors of the colonies met at New York and agreed on a general plan of military operations. The British army regulations, which gave precedence to officers holding British commissions over those issued by the colonies, were of course distasteful to the Americans, who naturally contrasted the prudence of Washington with the folly of Braddock. In this war the colonies made a very considerable show of military force. In the expedition against Crown Point in 1755 between 5,000 and 6,000 men were furnished by New England and New York. In 1757 more than 6,000 American troops were gathered at New York under the incompetent Lord Landoun. After Landoun's recall his successor Abercrombie gathered an army of 50,000, of whom 28,000 were provincials. Massachusetts alone raised 7,000 and Connecticut 5,000. America became an important field for the struggle between the two nations and, while the provincials furnished many men, large numbers of regulars were

brought over from England, and the command of all the principal armies was in the hands of British officers. The results of this war were important to the colonists in many ways. Canada, all the northern portion of the continent and also the Ohio valley, Florida and all the territory east of the Mississippi, except Louisiana, became British territory. The British government had become more fully aware of the value of the land and of the productive capacity of the colonies. Their cupidity was aroused and directed toward gaining wealth through exclusive trade privileges and taxation of the colonies. The right of the British Parliament to regulate the foreign trade of the colonies was not seriously questioned by the colonists, but its exercise, especially with respect to the trade with the West Indies, was regarded as a grievous injury. The natural advantages of exchanges of the products of New England for those of the southern islands were so great that the trade was very profitable.

On the question of the right of Parliament to levy taxes on the colonies a more decided stand was taken. It was claimed by the Americans, as a settled principle of English constitutional law, that no tax could be imposed on British subjects, except with the assent of representatives chosen by themselves, and that they were guaranteed the rights of Englishmen by their charters. As none of the colonies had representation in the British Parliament, it was denied that it had any right to grant their money to the king. The position taken by Franklin and most of the American leaders was, that the king should himself, through his ministers, call on the colonial assemblies for contributions to his treasury, and that these assemblies, as representatives of the American people, would then grant such revenues as were proper. The expense of the French and Indian War had added about £86,000,000 to the national debt of Great Britain, a sum exceeding the whole prior debt. English statesmen and taxpayers were eager to shift a part of the burden of this debt to the shoulders of the Americans. On the other side, the Americans had endured the horrors of warfare for British dominion, and insisted on their right to determine what they should pay.

From the time of Cromwell there was a marked difference in the development of ideas on the two sides of the Atlantic. In England there had been a strong reaction, not only against the religious sentiments of his time, but also against the liberal political ideas then prevailing. The house of Hanover labored to strengthen the royal prerogative, and popular rights in England meant nothing more than the rights of the wealthy and titled few. The toiling masses were not consulted in affairs of government. In America, the land held by resident owners was mostly in comparatively small tracts, its value depending almost wholly on the labors of the owners with some few slaves in places. There was no such system of tenantry as existed on the great manors of England. The democratic spirit had steadily grown, not as a result of political agitation, but of the modes of life, and the habits of thought naturally resulting from substantial equality of condition and daily necessity for independent action and self-reliance. For a century and a half the people had been accustomed to give heed only to regulations of their own making, and at times to refuse obedience to governors sent over from England, who sought to exercise arbitrary power. Under these different conditions a British Parliament was in no position to legislate intelligently for the colonies. It lacked the first and all important qualification, knowledge of the people, their character and surroundings. Nothing could have been more unwise than the stamp act of 1765, the leading provisions of which are given in the preceding chapter. The taxes it imposed were so noticeable, challenging the attention of the taxpayer to the fact of the imposition as well as the amount, whenever a stamp was required. It did not require actual payments under it to disclose its odious character to the colonists. They simply would not submit to it. Their protests and resistance were so general and so vigorous as to occasion its speedy repeal without the realization of any revenue from it. The inexcusable blunder had been made of challenging the attention of the people of the colonies to the principle involved, taxation without representation. Parliament still insisted on its sovereign power, and by the

declaratory act and the duties levied on tea and a few other commodities asserted its claims. The colonists would probably have submitted under protest to the collection of these duties had it not been for the unfortunate quartering of troops in Boston and the foolish act closing the port of Boston. The British ministry, still ignorant of American character, looked to military force to obtain obedience, and also sought, by increasing the salaries of the judges of Massachusetts and making them independent of the legislative assembly, to have an instrument they could rely on. These things tended to exasperate, rather than to overawe, the people.

Looking back at the issues raised between the British Ministry and the colonists, it must be admitted that from the English standpoint, their measures were mild for that age, that the home people bore far heavier burdens of taxation and were more oppressed by monopolies and trade restrictions than the Americans. The trouble was that there existed a wide difference between the states of public feeling in the two countries. A measure that would have fallen like a spark in wet straw in England was like a fire brand in dry prairie grass in America. It kindled instantly a flame which spread over the whole country. Though the colonies had some just grounds of complaint, they were not grievously oppressed. They enjoyed far greater advantages on the whole, with much lighter burdens, than the common people of England. The system of town meetings in New England was made use of to arouse the people and disseminate the views of the leading spirits on the public question involved. The various colonial assemblies passed resolutions on the subject. The discussion of the abstract question as to the right of Parliament to tax the colonies began in 1764 by a resolution of Parliament asserting the right. This was followed by a denial of it by the General Court of Massachusetts. After the passage of the stamp act, the House of Burgesses of Virginia also took its stand against the right, and other legislatures quickly passed similar resolutions. On Oct. 7, 1765, the first real American Congress met in New York. Nine colonies namely, Massachusetts, Rhode Island, Connecticut, New York, New Jersey

Pennsylvania, Delaware, Maine and South Carolina were represented by delegates numbering twenty-eight in all. This congress passed resolutions of loyalty, claiming that one of the rights of Englishmen, secured to all the colonies by their charters, was the right to tax themselves, which could only be done by their own legislative bodies. An address to the King, a memorial to the House of Lords and a petition to the House of Commons, were prepared and forwarded. Virginia, North Carolina and Georgia were prevented by their governors from sending delegates to this congress, but they forwarded petitions to England similar in import to the resolutions of the congress. A peculiar mode of resistance to British measures was that adopted by the merchants of Boston, New York and Connecticut, who agreed not to import or purchase any merchandise,—a few enumerated articles excepted,—from Great Britain for a year. Two regiments of soldiers having been quartered in Boston, some of them on March 5, 1770, exasperated by gibes and pelted with stones by a mob, fired on them, killing three and wounding others, one of whom afterward died. This was called the Boston Massacre and tended to increase the irritation caused by the quartering of troops there. Throughout the early years New England had been allowed greater freedom in the management of its domestic affairs than the more southern colonies. It was now made the center for repressive measures and the exercise of arbitrary power. The result could have been foretold by anyone familiar with the character of the New Englanders of that day, but ignorance of it led the British Ministry to commit blunder after blunder. The sentiment of loyalty to the British government and kinship to the English people was still strong throughout all the colonies. The people could easily have been led to tax themselves, and probably to have contributed their full share to the revenues of the crown, but they could not endure arbitrary power. Trade restrictions and duties led to smuggling, and this in turn to severe measures to repress it. In June 1772 the armed schooner *Gaspe*, employed in the revenue service, having run aground in shoal water near Providence, Rhode Island, was boarded by armed

men in whale boats and burned. The East India Company, encouraged by the allowance of a drawback of the English duty of a shilling a pound on tea to be exported to America, where the duty was only threepence, and believing they could realize great profits from it in the colonies, sent several shiploads to New York, Boston, Philadelphia, and Charleston. But the Americans had decided not to drink tea. At New York and Philadelphia the ships were sent back to London. At Charleston the people unloaded it and stored it in damp cellars, where it soon spoiled. At Boston, having vainly tried to send back the three shiploads which had arrived there, a party of men disguised as Indians boarded the ships and emptied the tea into the bay. As soon as this was known in England, Parliament passed a bill ordering the port of Boston closed, and followed it with bills prohibiting town meetings, except with the consent of the governor, and requiring persons charged with offenses against the state to be sent to England or another colony for trial. These were direct blows at the most dearly cherished rights of the people, which had been guaranteed them by their charters and enjoyed ever since the earliest settlements. The town meeting was like the tribal meeting of the ancient Saxons. Through it the public will found expression. It could not be taken away, except by a force superior at every point to the people of the colonies, yet an ignorant, foolhardy ministry sought, through a vote of Parliament, to revolutionize New England's political life. The first thing done at Boston, after the receipt of news of the passage of these acts, was to hold a town meeting. This was what had always been done when any matter of great public concern required attention. Resolutions were passed calling for concert of action among the colonies and a suspension of trade with Great Britain till the wrongs were righted. These extreme measures on the part of Great Britain were generally comprehended throughout the colonies, and the cause of Boston and Massachusetts was looked upon as one common to all the cities and colonies. The Virginia Assembly resolved to observe the first day of the operation of the port bill as a day of fasting, and proposed a general congress to deliberate and provide for the common welfare.

On September 4, 1774, delegates from eleven colonies met at Philadelphia and on the next day chose Peyton Randolph as their president. A declaration of rights was agreed upon and the repeal of the acts of Parliament infringing them was demanded. To enforce their demands an agreement to suspend trade relations with England was entered into. Addresses to the King, to the people of the colonies and of Great Britain were prepared. The effects of the liberties which the colonists had enjoyed, and of the attention paid by them to education, were now made manifest. Boldness of spirit in asserting their rights was the offspring of habits of self-reliance and independence, clearness of statement of their rights and demands was due to a thorough knowledge of the growth of liberal principles in England and of the free institutions of ancient Greece and Rome. Lord Chatham characterized the addresses as masterpieces of their kind. After an eight weeks' session Congress dissolved, with the recommendation that another be held on the tenth of May following at Philadelphia. The ministry looked to the army to enforce their policy, and General Gage and two regiments of infantry and some artillery were landed at Boston. The colonists began to make preparations for a collision, and the Massachusetts committee of safety gathered some supplies at Concord. Gage sent out a force to seize them, and the collision with the minute men of Lexington, which opened the war of the Revolution, took place April 19, 1775. Then followed on May 10 the capture of Ticonderoga and on June 17 the Battle of Bunker Hill. On May 10, 1775, the time fixed by the first congress, delegates from twelve colonies met at Philadelphia. They forthwith recognized the existence of a state of hostility between England and the colonies, and determined to provide for their defense, but, still seeking peace, they resolved that they wished for peace and that "to the promotion of this most desirable reconciliation an humble and dutiful petition be presented to his majesty." The petition and a second address to the people of Great Britain, as well as others to the people of Canada and Jamaica, were prepared. Congress voted to equip 20,000 men, chose George

Washington commander-in-chief of the army of the United Colonies, authorized an issue of bills of credit to the amount of \$3,000,000 and pledged the twelve United Colonies to their redemption. On July 6 the Continental Congress issued a manifesto, justifying their resort to arms, yet disclaiming any intention to establish their independence of the Crown. In July a convention in Georgia resolved to support the common cause and sent delegates to the Congress. In December Congress resolved to fit out thirteen ships of war. March 17, 1776, as a result of the siege by the American army under Washington, the British troops amounting to 7,000 men evacuated Boston, and a fleet took them to Halifax. The military operations in 1775 were generally favorable to the colonists, mainly because the British government had not yet organized and sent over its armies. Aug. 25, 1775, the king issued a proclamation against the rebellion and sedition in America, and in October Parliament voted 25,000 men to maintain his authority. Arrangements were soon after made to hire 17,000 Hessian auxiliaries. Thus war grew into greater proportions, and both sides looked to force rather than reason to maintain their positions. When the news reached America that so large a force was about to be sent against them, and that they had been declared out of the royal protection, the sentiment in favor of independence grew rapidly. It was perceived that open organized resistance of British authority was inconsistent with a pretense of loyalty to the king. Writers and speakers began to talk vigorously in favor of throwing off all allegiance and on June 7 Richard Henry Lee of Virginia moved in Congress "that the United Colonies are and ought to be, free and independent States, and that their political connection with Great Britain is, and ought to be dissolved." The motion was earnestly advocated and vigorously opposed. It passed by one majority. Further consideration of the subject was postponed until July 1, and a committee, consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman and Robert R. Livingston, was appointed to prepare a declaration. These were remarkably strong men, who thoroughly understood the feel-

ings of the people for whom they were to speak. The declaration they prepared, and which was finally adopted and proclaimed on July 4, 1776, still blazes forth as the beacon light by which Americans are guided in their efforts to secure liberty to all. The fundamental principles on which they based their action were not to be found in any code of Europe, nor have they yet been given full operation in America.

The substance is contained in the second paragraph as follows:

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." The declaration then proceeds with an arraignment of the King of England for a long list of tyrannical acts with which he was charged, and a justification of the course pursued by the colonists in their efforts to obtain redress of their grievances.

The breach between the British government and the colonies had now become irreparable and the old, cruel; and unnecessary method of settling questions of right by the horrors and barbarities of war was resorted to on both sides. British statesmen in all times past had relied on force to compel submission to their authority. American statesmen knew no other course but to resist force with force. Centuries of education to forsake Christ and follow the ancient war gods caused the people to follow their leaders into the bloody strife. That the misunderstanding started from a question which ought to have been settled by reason in a friendly conference is clear; yet so poor, clumsy, obstinate and morally defective were, and usually have been, the statesmen of the time, that untold misery must needs supply the place of the virtue and

intelligence which belong in the councils of a great nation. The frightful responsibility of setting the elder branch of the English family in arms against the younger one was assumed with that alacrity with which evil passions so frequently are allowed to lead to destruction.

Having utterly thrown off all the authority of the British government, the task of constructing one of their own was presented to the colonists. They were not hampered by any claims of hereditary authority on the part of Americans. British titles had remained on the east side of the ocean, and equality of political rights was not a discovery of some advanced philosopher, but a patent fact long recognized in America. Equality did not need to be established, nor was there any occasion for educating the people to it. Whatever sentiment of loyalty to the king or of respect for titled nobility existed—and there was some—was for a king and nobility far away across the ocean, not for dwellers in America.

The organization of new governments necessarily started from the people in their primary capacity, and was effected in each colony through the medium of a convention or assembly of delegates, selected by the people in their town meetings in New England and New York and their counties in the south. The transition from the colonial system to one of independent states was effected easily and naturally. The system which had prevailed needed only slight modification to provide for such parts of the governmental force as had been theretofore appointed by the Crown. All the colonies had elective legislative bodies, and Connecticut and Rhode Island chose their own Governors and judicial officers. The people were accustomed to look to their representatives for legislation on matters of interest to the colony, and systems of election were already in use, by which the people were accustomed to name them. The town meeting system, which prevailed in New England, furnished a most convenient means of expressing public sentiment, and one which the royal governors found it utterly impossible to seriously interfere with. The people in the southern colonies also found no difficulty in choosing

representatives and convening them for business. Constitutions providing for state governments were adopted during 1776 in all but four of the colonies; the conventions in Georgia and New York met in 1776, but did not complete their labors till February and April respectively of the following year. In Massachusetts a constitution was framed by the General Court in 1778 which was rejected by the people and it was not till 1780 that one was adopted. Connecticut, being satisfied with its existing system under its charter, merely affirmed its independence by an act of its General Court, adopted the form of civil government contained in the charter of Charles II and promulgated a brief bill of rights. A new constitution was not framed till 1818. Rhode Island also was so well satisfied with its charter government that it framed no constitution till 1842. In most of the colonies the governors had been named by the king, but the charters of Connecticut and Rhode Island provided that they should be elected by the General Assembly. It was therefore quite natural that, on cutting off the appointing power of the king, it should be transferred to the representative body. Under the first constitutions the chief executive officer, styled Governor in some states and President in others, was elected by direct vote of the people in Massachusetts and New York only. His term in New York was three years. In New Hampshire a temporary arrangement was made for the choice of a council of twelve, by whom a president was named. The constitution then adopted was not intended to be complete or permanent. In 1784 a new one was framed under which the President was chosen by the people. In all the other colonies the Governor was chosen by the Legislative body and held office only for one year. The preponderating force in all the states was the great representative body, which derived its authority and was named directly by the people. The idea prevailed everywhere that delegates to the legislature should come out of the body of the people and return to them at short intervals, so as to always be in a position to truly represent the prevailing sentiment of those for whom they acted. The members of the most numerous branch of the legislature were chosen for

one year only in every state except South Carolina, where the term was two years. Most of the constitutions provided also for a senate or legislative council, to be elected at the same time as the representatives, but in New York and Virginia the senators were elected for four years and in Maryland for five years. In most of the states an executive council was also provided for, which was selected by the assembly. While some of the more carefully drawn constitutions provide in express terms for the separation and independence of the executive, legislative and judicial functions, the provisions of some of them with reference to the choice and powers of the judiciary are not very explicit. In no case was their election by the people required. The tenure of office of the judges of the high courts was during good behavior in all the states which framed new constitutions at that time, except New Jersey and Pennsylvania, where the term was seven years. Nearly all the constitutions guarantee full religious liberty without qualification, but that of Massachusetts allows the Legislature to provide for public worship and qualifies the freedom of religious observances. The distaste in some states for clerical interference in affairs of state was so great, that the constitutions of Delaware, Georgia, New Jersey, North Carolina and Virginia, expressly disqualify all ministers of the gospel from sitting in the Legislature, and some of them disqualify them from holding any office whatever. All the states provided for the choice of delegates to the Congress of the United States to be chosen annually by the Legislature. The constitution of Massachusetts is the most full and explicit of all and goes much more into details than the others. The constitutions of Maryland, Massachusetts, North Carolina and Pennsylvania begin with what are termed Declarations of Rights and that of Virginia with a Bill of Rights. Perhaps the best of these for brevity, clearness and strength is that of North Carolina, though that of Virginia is also an admirable model. All these constitutions crystalize the impulse and spirit which moved the colonists to revolt. The prime purpose of all of them was to protect the people against arbitrary power. Liberty and public order were the

two great blessings they were designed to secure. With the amendments, which subsequent experience has dictated, they have been found to serve these purposes admirably. The one fatal inconsistency of such lofty statements of the inalienable rights of men with the actual holding of slaves was felt by the leading statesmen of the time, but could not then be avoided. Little mention of African slavery is to be found in these constitutions, most of which are altogether silent on the subject. Delaware provided that no slaves should be thereafter brought in from Africa, nor from other colonies for sale. While the work of forming state governments went on so expeditiously, that of providing a system for conducting the general affairs of the United States was found much more difficult. No general government had ever existed, except the British monarchy, which was utterly thrown off. No model existed for, nor were the people educated or accustomed to respect, any central authority speaking for all. Though a congress had been formed by the simple process of sending delegates from each colony, the extent of its powers and the manner of exercising them was wholly undefined, and the ratification of the state governments was requisite before the resolutions of Congress could be given effect.

On June 11, 1776, Congress resolved that a committee should be appointed to prepare a form of confederation, and on the next day the committee was made up. It was not till Nov. 15, 1777, that articles of confederation were completed, finally agreed to in Congress and proposed to the states. They were formally ratified and signed on behalf of eight states on July 9, 1778, but did not receive the assent of Maryland till March 1, 1781. These articles provided for the retention of their sovereignty by the states, but united them in a league for mutual defense. They gave to the citizens of each state all the privileges of citizens of the other states, and provided for a Congress, made up of delegates from the states, chosen for one year subject to recall. Each state was given only one vote in Congress, but might be represented by not less than two nor more than seven delegates. The states were prohibited from making treaties, sending embassies or

forming alliances with each other without the consent of Congress. The treasury of the Confederate States was dependent on contributions from the states, to be raised under the direction of the Legislatures, as were the quotas of men for the army and navy. Congress was given exclusive power to make peace or war, send ambassadors, make treaties, decide controversies between the states, regulate the coinage of money and to conduct the general affairs of the states. A committee of the states with a president was vested with executive power during the recess of Congress.

The weakness of this plan of organization lay in its lack of executive force. The Congress could do little more than resolve and give directions for the use of the troops and the disbursement of the funds which the state legislatures might provide. It had no power to act directly on the citizens of the states. It could neither enforce military service nor collect taxes. These defects became painfully apparent as the war progressed and the necessities of unity and promptness became more and more apparent. Not only was there great delay in obtaining supplies through the state legislatures, but there was no means of compelling action on their part after Congress had made its requisition. The devotion of the people to the cause of liberty, and the remarkable patience, steadiness of purpose and ability to inspire confidence, exhibited by Washington, had to make good the weakness of Congressional authority. Though in military organization and equipment the Americans were far inferior to the British, in spirit and enterprise they were quite superior. The British could take the seaport cities with comparative ease, but Burgoyne fell into difficulties and was forced to surrender his army in an attempt to force his way through New York. The spirit and energy with which the Americans surrounded him with a superior force were characteristic of a free people. Similar conditions proved the ruin of Cornwallis and his army. With the aid of France and Spain the independence of the colonies was achieved, and a preliminary treaty of peace was signed at Paris on Nov. 30, 1782. The final definitive treaty was not completed and signed till September 3, 1783.

Though many inconveniences had attended the loose organization under the articles of confederation, while the war lasted the authority of Congress was generally respected, and it gained a character with the people, who generally understood that success without united action would have been impossible. When the strain of war was removed the inadequacy of the powers of Congress to provide for the general welfare became more apparent and, the common danger being past, conflicting interests of the different states were regarded as of more importance, and the effect of commercial treaties, which Congress had no power to make binding on the state, more productive of discord. A great debt had been incurred, for the payment of which Congress had no adequate powers of taxation. The army, which had fought so successfully, was to be disbanded with large arrears of pay due the soldiers. The recommendations by Congress of treaties negotiated with foreign powers, and for the raising of funds to pay public obligations, were no longer followed by the states, unless satisfactory to them. The pressure of evident necessity to force compliance was lacking. The desire for a more efficient national organization had been frequently expressed, and, under the lead of Virginia, a convention was called to meet at Annapolis to consider the subject, but the attendance was so small that nothing of importance was done beyond issuing an address urging the appointment of commissioners from each state to meet in Philadelphia in May following. On Feb. 21, 1787, Congress adopted a resolution favoring the convention. In pursuance of this plan a convention with delegates from seven states, and later from all but Rhode Island, met at Philadelphia and elected George Washington as its president. This convention framed a constitution, a full copy of which with all amendments subsequently adopted will be found in the appendix.

This constitution having been agreed to by the Convention, engrossed and signed by all the members present, except Gerry of Massachusetts and Mason and Randolph of Virginia, was transmitted by the president to Congress with a resolution providing the manner of putting it in execution

and an explanatory letter. On September 28, 1787, Congress directed that the Constitution, resolutions and letter "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention." It was ratified by the states on the dates following: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789, and Rhode Island, May 29, 1790. The new constitution was put in operation on March 4, 1789, with George Washington as President and John Adams as Vice-President, before its ratification by the two states last named. There had been violent opposition to it, mainly on the ground that it conferred so much power on the general government and was deficient in its guarantees of liberty and of the rights of the states. This feeling was so strong and general that the first Congress, on September 25, 1789, proposed twelve amendments to the Legislatures of the states, ten of which were ratified by the requisite number of states by December 15, 1791. The journals of Congress do not show any ratification by either Connecticut, Georgia or Massachusetts, but include Vermont, which had been admitted into the union, February 19, 1791, as a new state. The new articles adopted are given in the appendix.

The next amendment was proposed by Congress September 5, 1794, declared adopted January 8, 1798 and reads:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The Supreme Court of the United States had decided, that it had jurisdiction of a suit to compel a state to pay a debt, and this amendment was adopted to prohibit any further exercise of such jurisdiction. The next amendment was pro-

posed in 1803, proclaimed as adopted September 25, 1804, and stands as Article 12 of amendments. It changes the mode of electing the president and vice-president. No further amendments were made for more than sixty years. The next were the XIII and XIV, prohibiting slavery, and guaranteeing the rights of the liberated negroes, which followed as a result of the Civil War. The thirteenth was proposed February 1, 1865, and declared adopted December 18, 1865. The fourteenth was proposed June 16, 1866, and declared adopted July 21, 1868.

The Supreme Court of the United States has held that corporations are citizens within the meaning of the first section of this amendment, and the principal effect of the amendment, so construed, is to prohibit the state Legislatures from regulating the business of great corporations, a matter never discussed or generally thought of when the amendment was adopted. The XV was proposed February 27, 1869, and declared adopted March 30, 1870. The XVI amendment was proposed by Congress and ratified by the requisite number of states in February, 1913. From the time of the French and Indian War the political principle most cherished among the people of the American states has been, and still is, individual liberty. Resort to arms for the maintenance of their rights, has been, and still is, generally regarded as justifiable, and the war spirit is perhaps as prevalent as in the European states. In 1801 hostilities commenced with Tripoli and were continued till June 1805 by the naval force. The wars in Europe were the occasion of acts on the part of both England and France which caused great irritation to those engaged in foreign commerce. The search of American vessels for deserters from the British navy, practised by the English, was especially exasperating. Other high-handed proceedings on the part of the British government led to a declaration of war on June 19, 1812. It was expected that the people of Canada would break away from Great Britain and join the United States, but in this they were disappointed. In this contest the Americans again had to face Indian warfare on the frontiers. In the fighting on land the advantages were mainly on

the side of the British, whose troops were better disciplined, but at sea the Americans disputed their claim to rule the wave and won some victories, sustaining also some defeats. The contest with France drew the main force of the British and saved the Americans from the full brunt of the war. A treaty of peace was made in December 1814. With the exception of the Indian wars, which took place on the frontiers from time to time, the country was at peace till 1846. Texas, having gained its independence from Mexico, was on March 1, 1845, annexed to the United States and admitted into the union as a new state on December 29, 1845. War with Mexico followed and as a result of it, by the treaty of Guadalupe Hidalgo, concluded February 2, 1848, the vast territory from Texas to the Pacific was added to the possessions of the United States. The Louisiana purchase in 1803 had added the fertile district of undefined extent west of the Mississippi River, and in 1821 Florida was ceded by Spain. By a subsequent treaty a relatively small district was purchased from Mexico, known as the Gadsden purchase, thus completing the present boundaries of the contiguous territory of the United States. The foreign wars of the United States, except that with England, have not been of such magnitude as to seriously strain the resources of the country or check its growth and prosperity. The unfortunate circumstance of a slave population in a part of a great country, whose leading political dogma was personal liberty, led, first to bitter words and then to a civil war between a part of the slaveholding states and the regular government, which, for the vast numbers of men drawn into the armies, the bloody battles fought, and the determination of each side to succeed at all hazards, has rarely been equalled. In the political campaign of 1860 there was a breaking up of old parties, and a new party, whose main purpose was to prevent the extension of slavery into the territories, elected its candidates for president and vice-president. Leaders in the slave-holding states saw in this a menace to the institution of slavery and induced the states to attempt to withdraw from the Union. The right of a state to secede was asserted in the south and denied in

the north. No peaceful tribunal existed to which the parties were willing to submit the question, and the old, horrible, barbarous tribunal of war was invoked. During the struggle the government of the United States expended far more money in expenses of the war than the market value of all the slaves in the whole Union. As a mere matter of dollars, the general government could have bought, paid for and liberated every slave for far less money than was expended on the army and navy. Far more important of course than the money, were the men who lost their lives, their limbs or health in the contest, and the misery and destitution in the homes of the absent soldiers. These were the direct and apparent effects of the mad struggle. The indirect effects, though not so easily discerned, were of great importance. There was a general lowering of moral standards throughout the country. An impetus was given to the building of great fortunes, and to corrupt influences on public officials from which the country has not recovered. The object lessons of the war, most patent to the rising generation, were lessons of the use of the organized powers of the contending parties for the taking of the lives and the destruction of the property of each other. This war could not have taken place if the people generally had been educated to condemn war as barbarous. The histories, then and still read by the people, are mostly filled with the details of wars, and the men most admired and extolled are the military leaders. The war spirit will be propagated and break forth with its furies and moral pestilence till the people are taught peace, and wholesale murder by nations is classed with retail murder by individuals and condemned by the public conscience. Nations have seldom suffered more severely from the effects of civil war than did the United States from 1861 to 1865, yet perhaps none ever recovered from the effects so rapidly. The question which gave rise to the conflict having been decided and the basis of the contention removed, the work of resuming harmonious relations was quickly accomplished. The people of the seceded states were taken again into the Union, which they had vainly tried to break away from, and accorded all the rights and privileges of those who had maintained it.

From the adoption of the fifteenth amendment till the ratification of the sixteenth a period of forty-three years elapsed.

State Constitutions

From thirteen, the number of the revolting colonies which assumed independence and sovereignty in 1776, the Union has now grown to contain forty-eight states, each with rights equal to those enjoyed by the original thirteen. The early constitutions modelled as we have seen after the colonial systems of government theretofore prevailing, have been amended or superseded by new ones from time to time, and the forty-eight fundamental laws of the states afford a most pleasing exhibit of advancement in the administration of public affairs and the development of the principles of government by a free and intelligent people. The ideas of government generally entertained at the time of the Revolution, having been moulded in English forms, did not extend to the selection of executive and judicial officers by direct choice of the people. Delegates to the legislative body, chosen in comparatively small districts, were the only officials selected by vote of the people in England. So, under the first constitutions of the states, the people elected only representatives to the legislatures, leaving to them the selection of executive and judicial officers. In Connecticut the people had always elected their governors and in Massachusetts had done so till their charter was annulled. As a safeguard against the arbitrary exercise of power, the expedient of three separate coördinate departments was adopted. The idea of this division of powers is thus clearly expressed in the fourth Article of the declaration of rights in the constitution of North Carolina of 1776.

“That the legislative, executive and supreme judicial powers of government ought to be forever separate and distinct from each other.” The same idea is embodied in all the constitutions and expressed in terms in many of them. Over and above the division of governmental powers in such manner as to furnish separate departments to operate as a check on each other, the framers of the constitutions were so jealous

of their personal rights and so fearful of the tendency, always and everywhere manifested under established governments, for officials to encroach on the rights of the people, that Bills of Rights, or Declarations of Rights, were incorporated in most of the constitutions, usually appearing as the first part. These Bills or Declarations are in all cases intended as limitations on the powers and functions of government and reservations to the people of full liberty of action in those particulars in which the state has no concern. This idea is not expressed in direct terms in any of the constitutions made prior to the close of the revolutionary war, but Section 46 of the Constitution of Pennsylvania of 1776 reads:

"The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any pretense whatever."

In the present constitution of that state adopted in 1873 the idea is thus clearly and forcibly expressed in the last section of the Declaration of Rights,

"To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate."

The constitutions of Florida, Alabama, Delaware, Kentucky, Texas and North Dakota contain either identical or similar language. In some states the framers of the constitutions have seemed more fearful that the bill of rights might be construed as a statement of all the reserved rights of the people, and therefore a limitation on them, and have inserted the following clause (copied from the constitution of Maryland of 1867):

"This enumeration of rights shall not be construed to impair or deny others retained by the people."

The same or similar language occurs in the last constitutions of California, Colorado, Iowa, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Virginia, Idaho, Montana, Utah, Wyoming and Washington. In the constitution of Kansas and some other states there is

added "and all powers not herein delegated shall remain with the people." There is some diversity in the statement of these rights in the different constitutions, owing to a diversity of conditions. The tendency of late has been toward brevity. The main purport of all of them is to make a reservation of all political power in the people, except as specifically delegated, to guarantee freedom from arrest, except for lawful cause, freedom of speech, religious liberty, the right to bear arms, exemption of property from seizure or search, except on lawful process, trial by jury, the writ of habeas corpus, freedom of the press, no taxation without representation, the right to peacefully assemble, consult and instruct their representatives, and to prohibit exclusive privileges, hereditary titles, the suspension of laws, arbitrary arrests, the exaction of excessive bail, general search warrants, standing armies in time of peace, perpetuities and monopolies, hereditary honors, privileges or emoluments, and ex post facto laws, and to subordinate the military to the civil power. These fundamental ideas found vigorous expression in the earliest constitutions and have not been greatly extended or improved in later ones, that of North Carolina of 1776 being perhaps as clear and strong as any other. Marked changes have been made in the terms of office and modes of electing the executive and judicial officers. Members of the legislature are still chosen in accordance with substantially the same principals and in much the same manner as at first, but there has been a tendency to lengthen the official term, and in many states to have less frequent sessions. Under the first constitutions members of the legislature were generally elected annually, holding for the year only. Under the latest constitutions, members of the most numerous body, usually called the House of Representatives, are now chosen annually in nine states and for terms of two years in all the other states. Senators are elected for one year only in four states, namely, Connecticut, Massachusetts, Maine, and Rhode Island, for two years in fourteen states for three years in one, New Jersey, and for four years in twenty-nine states. The term of office of the governor is one year only in the four New

England states last named, it is two years in twenty states, three years in one, New Jersey, and four years in twenty-three states. In the early days substantially all the other state executive officers were appointed by the governor or elected by the Legislature. Most of the later constitutions provide for the election of some other state officers by the people, usually including Secretary of State, Treasurer, Auditor, Attorney-General, Superintendent of public instruction and in some states Surveyor-General. The governor is now elected by direct vote of the people in all the states, and in most, if not all of them, a Lieutenant Governor is also so elected. Thus not only the governors but the principal heads of executive departments are chosen directly by the people by ballot. In England and in the colonies, except as stated, there was no balloting by all the people for executive or other state officers, popular elections being confined to comparatively small districts.

In England, where the judges have always been appointed by the king, it was thought that the independence of the judiciary would be secured and the administration of justice improved by giving the judges a life tenure of office with a fixed salary assured, and this was done by Parliament with this end in view. In the colonies before the revolution, there was the same desire for an independent judiciary and the same means was adopted to secure it. The effect of the difference between the appointive system in England and the elective system in America was not at first perceived. The judges were appointed by the governor or chosen by the legislature and held during good behavior. This system is still preserved in the appointment of the judges of the United States and in their tenure of office. It has since been perceived that there is a wide difference between independence of the crown and independence of the people. Under the English system life tenure tended to judicial independence and afforded a check on the exercise of arbitrary power by the king; under the American it tends to independence of the people and the exercise of arbitrary power by the judges, and to judicial favoritism. It fills the bench with men too

old for usefulness and too much attached to all that is bad in the law and the system of administering it to admit of a progressive administration of justice by them. These considerations have not escaped the attention of the framers of the new state constitutions, and in all the new states the judicial offices have been made elective for limited terms. In most of the original states a similar change has been made under later constitutions. There is still what amounts practically to life tenure in Delaware, Florida, Massachusetts, New Hampshire and Rhode Island. The terms in the other states vary from two years in Vermont to twenty-one in Pennsylvania, for the judges of the court of last resort, the term most common being six years in nineteen of the states. The principle of popular election of judges has not yet been universally adopted. In nine states the judges are still appointed by the governor, confirmation by the senate being required in eight of these, in five they are chosen by the Legislature, and in the remaining thirty-four including all the most populous states, they are elected by the people. The institution of a council of state, apart from the heads of departments of the state government, which obtained at the time of the formation of the state governments, has nearly disappeared in that form, but the chief executive officers form a kind of executive council for certain administrative purposes. The evolution of state constitutions to their present type of remarkable uniformity, when differences of conditions are considered, has been effected in some states by amendment only of the early constitutions, submitted to the people for ratification, and in others by conventions called to frame new constitutions. Among the best provisions of all the constitutions are those which provide for their own amendment or abrogation whenever the people see fit to make changes. More than a majority vote of the legislature is generally required, usually two-thirds, to submit an amendment or call a convention, but this restriction has not had the effect to prevent frequent alterations of the fundamental laws of the states. Of the thirteen original states Massachusetts alone still retains its first constitution, but this has been

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amended many times. In Connecticut the state government continued under the colonial charter till 1818, when a new constitution was framed and adopted, this, however, had by 1875, been amended in twelve different years. Rhode Island adopted its first constitution in 1842 and has not amended it many times. New Jersey adopted a new constitution in 1844. Delaware, New Hampshire and New York have each had three constitutions, and New York has also adopted numerous amendments. North Carolina, Pennsylvania and Maine have each had four, Virginia and Georgia six and South Carolina seven. The number for the last named states and North Carolina is due in part to the Civil War, which occasioned new constitutions at the commencement and after the conclusion of the war. This occurred in all the seceded states. Other northern states, admitted after the Revolutionary War, have shown almost equal activity in remoulding their fundamental laws. The early types, of which that of Massachusetts is the most full, by the declaration of rights, exclude certain matters from governmental interference, divide the powers into three coördinate branches, and impose certain restrictions on the action of the Legislature. The manner of electing officials and their duties are regulated and the methods to be pursued in the enactment of laws. That of Massachusetts devotes space to educational institutions and to forms of official oaths and religious declarations, requiring all state officers to declare that they believe the Christian religion and are possessed of the amount of property required as a qualification for the office. A property qualification was required by most of the early constitutions to entitle a person to vote. In Massachusetts he must have a freehold estate yielding £3 per year or £60 of other property. It is sometimes asserted that the southern states were more aristocratic in their ideas than the northern ones, but this does not find expression in their constitutions. In Pennsylvania and North Carolina it was only required that the voter should have resided in the state a year and paid a tax, in Georgia he must have £10 value or be a mechanic with six months' residence, in Maryland fifty acres of land or £30 value.

By new constitutions or amendments to the old the right of suffrage has been extended in most of the states to all males twenty-one years old, who have resided in the state the requisite time, six months or a year in most cases, and who are not criminals or public charges or *non compos mentis*. Most states allow foreign born men, who have declared their intention to become citizens of the United States, to vote. There is usually a requirement that the person offering to vote shall have resided in the voting district a prescribed length of time.

The tide continued steadily in the direction of extension of the elective franchise till very near the close of the nineteenth century. The last state to do away with its requirement of a property qualification was Rhode Island, which in 1888 changed its provision so as to take away the requirement, except in voting for city council and on the expenditure of money in the towns, where it is still retained. At that date the only cases of further restrictions were those requiring the voter to have paid taxes in Delaware, Georgia, Pennsylvania, Tennessee and Massachusetts, and that the voter, except under certain stated conditions excusing it, should be able to read. The peculiar situations in some of the southern states, where the fear of negro rule has ever been present since the adoption of the fifteenth amendment to the Constitution of the United States, has led to the adoption of peculiar constitutional provisions, designed to take away the elective franchise from the negroes without violating the fifteenth amendment. In this, South Carolina, where the colored population is most largely in the majority, took the lead, and in 1895 adopted a new constitution, which requires that the voter must have resided in the state two years, in the county one year and in the polling precinct four months before election, and have paid a poll tax. He must be registered, and to obtain registration must be able to read any section of the state constitution submitted to him by the registration officer, or understand and explain it when read to him by the officer. After 1898 he must be able to both read and write any section of the constitution submitted to him, or

must own and have paid taxes on property assessed at \$300. There are fifteen sections in the article on Right of Suffrage. The lead of South Carolina was followed in Louisiana, where the negroes also constitute a majority, and in 1898 a constitution was adopted, requiring that a voter be able to read and write or be a bona fide owner of property assessed at \$300, but all persons, who were voters under the laws of the state where they resided on January 1, 1867, and all their lineal descendants, are exempted from these requirements and may vote without regard to either of them. Substantially the same provision is made in the constitution of North Carolina, adopted in 1902. As negroes were not entitled to vote in 1867, it practically excludes the illiterate negroes and admits the illiterate whites, without doing so in express terms. The great question with reference to the elective franchise, now being most generally considered, is concerning the right of females to vote. Utah, Idaho and Wyoming, by constitutions framed in 1889, have provided that the right to vote shall not be denied on account of sex. In an earlier constitution, that of 1876, Colorado had provided that the Legislature might permit women to vote. In 1912 California and Kansas adopted amendments giving women the right to vote. The constitution of South Dakota allows women to vote at school elections, and the constitutions of other states permit the legislature to extend to them the right to vote at school elections. The modern state constitutions go more into minute details than the earlier ones, and the subjects of taxation, municipal organization, private corporations, and education have received much attention. Nowhere else has the desire for internal improvements, especially for the construction of railroads, been such a passion among the people. From the earliest days of railroad building to the present time there has been a tendency to burden states, counties and municipalities with indebtedness, often to a ruinous amount, to obtain new railroads, and, when the full burden was felt, to attempt to repudiate it. Bonds issued for these purposes have been and still are heavy burdens on a large part of the country. In the early stages of railroad building state aid

was often granted and in some instances construction was undertaken by the state. There was also, prior to the Civil War and the passage of the national banking act, a strong tendency to establish state banks, authorized to issue bills based to a greater or less degree according to the views of the Legislature on the credit of the state. About 1850, some of the states, which had suffered most from the reckless use of credit, commenced to adopt constitutional restrictions, thus the constitution of Ohio adopted in 1851 provides, "The credit of the state shall not in any manner be given or loaned to, or in aid of, any individual, association, or corporation whatever; nor shall the State ever hereafter become a joint owner or stockholder in any company or association in this state or elsewhere, formed for any purpose whatever." The state was also prohibited from assuming the debts of any of its subdivisions, or of any corporation whatever, unless to repel invasion or suppress insurrection, and counties, cities and towns were prohibited from becoming stockholders in corporations or loaning their credit to aid them. These provisions indicate the prevalence of the undertakings thereby prohibited. The newer states, however, have exhibited the old passion for public improvements, especially railroads, and some of them still permit a limited amount of aid to be voted by counties, cities and townships for the construction of railroads.

The regulation of the governments of cities is a problem not very definitely solved as yet. It is a subject of constant legislation and change, wherever there are large cities, but is seldom treated in much detail in state constitutions. The general framework of the governmental system has not been greatly changed. All the states are divided into counties, the counties generally into towns or townships and the townships into school and road districts. These are the only general divisions of the territory for administrative purposes. Congressional, judicial, senatorial, representative and other districts are established for the election of officers and to define their territorial jurisdiction. The principle of local self-government is applied, subject to legislative and judicial

supervision. Each county has its board charged with supervision of roads, bridges, county buildings and county interests. In each a court of general original jurisdiction is held at stated times. Each county elects its officers, including generally in addition to the county board, a sheriff, treasurer, recorder of deeds, superintendent of schools, coroner, attorney and county clerk. Other county officers are sometimes added. In the New England States, New York and other states closely modelling their township organizations after them, the town officers are more numerous and their duties more important than in the southern and some of the western states, where the tendency is to trust more to the county boards. The school districts are very important divisions and have charge of their own schools, which are generally looked after by a district board in accordance with specific directions given by the voters at a general meeting. The taxes for school purposes are usually voted at the annual meeting and the teachers are employed by the board.

At the time of the Revolution the prevailing opinions with reference to the distribution of governmental powers were, that usurpation of authority and oppressive exercise of it were most to be apprehended from executive officers, that the legislative body, made up of representatives chosen directly by the people, could best be trusted to guard their interests and should be the repository of the most important delegated powers. The judiciary was not then looked upon as more than a department for the adjustment of controversies between private persons, municipalities and states and for the trial of persons charged with crimes. That it would ever supervise, control or nullify legislative action was not thought of, because no such power had theretofore been exercised in England or America by the courts, nor is there yet any such thing as an unconstitutional act of the British Parliament. But the idea of placing limitations on the powers of government necessarily carried with it limitations on the powers of the Legislatures, then regarded as of such preponderating influence and importance. The bills of rights are all limitations on the powers of all departments of gov-

ernment, as well as mandatory in directing the performance of certain official duties.

Throughout colonial times the legislatures had always stood as the champions of the people, representing their interests and urging their claims. The governors, and those holding office by appointment from them, represented the British government. It was through the governors that enforcement of the acts of Parliament and the administrative policy of the ministry was attempted. When the change was made, which took away the connection between the governors and the British crown, the people did not at once get rid of their antipathy to governors nor determine to invest them with extensive power. There has, however, been a decided tendency to place more power in the hands of the governors. By the original constitutions the governors had no part in the making of laws and no veto on the action of the legislature in Virginia, North Carolina, New Hampshire, New Jersey, Delaware, Georgia or Maryland. In Massachusetts the governor might object, and a two-thirds vote was then required to pass the act. In New York the governor, chancellor and judges of the Supreme Court, or any two of them, were required to revise bills and might object to them, when a two-thirds vote was required for their passage. In Connecticut and Rhode Island, under their charters, the governors were a part of the law-making power. In South Carolina the governor was given an absolute veto under the constitution of 1776. Under the existing constitutions the governor has no absolute negative on legislation in any state, but in all but Delaware, North Carolina, Ohio and Rhode Island, he may return the bill with his objections, when if it receives the requisite majority, it may become a law. The vote required varies from a majority of all the members elected to each house, to two-thirds of all elected, the latter being the usual requirement. In Vermont the objection of the governor suspends the operation of the law till the next session of the Legislature. Of the early constitutions that of Massachusetts is the longest and is divided into six chapters, preceded by the Declaration of Rights, which contains thirty sections or Arti-

cles, as they are termed. Chapter I relates to the Legislature, confers legislative power on the senate and house of representatives, prescribes the manner of their election, time of meeting and number required for a quorum and exempts members from arrest going to, returning from and attending the assembly. Chapter II prescribes the manner of electing the governor, makes him commander-in-chief of the army and navy, and confers the pardoning power and power to appoint all judicial and executive offices, with certain named exceptions. All public moneys are required to be paid out only on his warrants. A lieutenant governor and a council of nine, to advise the governor, are also provided for in this chapter and the mode of their election pointed out. A secretary, treasurer, receiver general, commissary general, notaries public and naval officers are required to be chosen annually by the legislature by joint ballot. Chapter III treats of the judicial power and makes the terms of judicial officers during good behavior, except justices of the peace, whose terms are seven years. Article 5 of this chapter reads: "All causes of marriage, divorce and alimony and all appeals from the judges of probate shall be heard and determined by the governor and council until the legislature shall, by law, make other provision." Chapter IV provides for the election of delegates to congress by joint ballot of the Legislature. Chapter V relates to the University of Cambridge, confirms its charter rights, and makes it the duty of legislatures and magistrates to "cherish the interests" of schools, learning, arts, science, etc. Chapter VI contains long forms of official oaths and declarations, prohibits any person from holding more than one of the principal offices named, adopts the laws theretofore adopted, used and approved in the courts, requires that the writ of habeas corpus be made free and cheap, and prohibits its suspension, except on urgent occasions and for not more than twelve months. This old constitution is the only one the state has ever had, but it has been amended from time to time. With all its amendments it lacks much of the completeness of the later constitutions, of which perhaps a fair type is that adopted in Missouri in 1875, which is

divided into fifteen articles. Art. 1 confirms the existing boundaries of the state and makes all rivers bordering on the state free public highways to all citizens of the United States. Art. 2, is the Bill of Rights with thirty-two Sections of the usual purport. Art. 3 distributes the powers of government among the three departments. Art. 4, vests the legislative power in the general assembly, provides for the apportionment of the state into senatorial and legislative districts, fixes the qualifications, compensation and terms of office of senators and representatives, provides the manner of organization of the houses, requires a majority of all for a quorum, regulates the procedure in the passage of bills with minuteness, requiring the vote on final passage to be taken by yeas and nays and recorded on the journal. Then follow unusually severe restrictions on the power of the legislature to appropriate money, requiring the payment of the public debt to be first provided for, appropriations for school purposes next, and pay of the assembly last. The power to create a public debt is limited to unforeseen emergencies, and the legislature is prohibited from lending the credit of the state to aid any person or corporation or give away public money, except in case of a public calamity, or to authorize any county or municipality to do so or to become a stockholder in any corporation, and the assembly is prohibited from subscribing for stock in any corporation. The assembly is also prohibited from passing local or special laws for a long list of enumerated purposes, including the granting of charters and corporate privileges. This constitution is of the most extreme type in the strictness with which it restrains the action of the Legislature. Article 5, relates to the executive departments and prescribes the terms of office, manner of election, powers and duties of the governor and members of the executive department. Article 6, relates to the Judicial Department, prescribes the powers and duties of the different courts, the number and manner of election of the judges and contains forty-four sections. Article 7 authorizes the impeachment of all the principal executive and judicial officers by the house and their trial by the senate, but limits the judgment to re-

moval and disqualification from holding office. Article 8. Prescribes the qualifications of electors and requires all elections by the people to be by ballot and all elections by representatives to be *viva voce*. Article 9 relates to counties, cities and towns and provides for their organization and government. Cities of 100,000 population or more are authorized to frame their own charters, submit them to the people, and if ratified by their votes the charter becomes operative. Alternative sections may be submitted and voted on separately by the voters without prejudice to the others. Article 10 treats of revenue and taxation and is very rigid in its limitations. The legislature can only impose taxes for general purposes, powers of local taxation can only be exercised by the counties, cities, towns and municipalities for which the moneys raised are to be expended. Taxes are required to be uniform and no property can be discharged from its equal share of a public burden, except public property which is made exempt from all taxes. The creation of municipal indebtedness and the amount of the annual tax levy in counties, cities, towns and school districts is strictly limited. No other state has such full or rigid restrictions in these respects. Article 11 in its first section expresses modern American views on the subject of education. "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty." Separate schools for children of African descent are required. Provision is made for the maintenance of the State University and the investment of the public school funds. Article 12 deals with corporations and prohibits their creation by special acts or the conferring of special powers, and the issuing of stock except for a valuable consideration received. Railroad corporations are separately treated and are prohibited from discriminating between patrons, from consolidating with parallel or competing lines and from granting passes to members of the assembly, board of equalization, or any State, county or municipal officer.

The acceptance of a pass forfeits the office. The creation of a state bank is prohibited and any law authorizing the creation of banking corporations must be submitted to a vote of the people before going into effect. It is made a crime for any bank officer to assent to the receipt of deposits after knowledge of the insolvency of the bank. The legislature cannot remit the forfeiture of a charter, and the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state. An important provision is that which authorizes the condemnation, under the power of eminent domain, of the property and franchises of corporations, as well as individuals, and provides that the right of trial by jury shall remain inviolate in all cases where corporations are interested in the determination of claims for compensation in the exercise of the right of eminent domain. This provision appears, in almost identical language, in the constitution of Illinois of 1870, of Pennsylvania of 1873 and Arkansas of 1874, and its importance can only be measured by the growing sentiment in favor of public ownership and operation of public utilities, now mainly in the hands of private corporations. The extension of the principle of local self-government logically lies in the direction of its application to great combinations to carry on a business which requires large capital and many employees. It is a little surprising not to find the provision, common to most state constitutions since the decision of the Supreme Court in the Dartmouth College case, that corporations may be created only by general laws which may be amended or repealed. The remaining articles of this constitution are Article 13 which treats of the organization of the militia, Article 14 with miscellaneous provisions, prohibiting civil or criminal proceedings growing out of acts done in the military service during the civil war under the authority of either the Federal or Confederate government, disqualifying duelist from holding office, also any person holding an office under the United States, prohibiting the increase of the compensation of officers during their terms of

office or extending their official terms, prohibiting lotteries, and making some minor regulations. Article 15 points out the mode of amending the constitution, requiring only a majority of the legislature to submit and a majority of the people to adopt an amendment. Many amendments have been adopted, including one allowing three-fourths of the jurors to render a verdict in a civil case.

The new constitution of Illinois adopted in 1870 is not so long but covers much the same ground, having fourteen articles, among which those relating to Revenue, Counties and Corporations are quite full. A separate article is devoted to warehouses, a subject not elsewhere of so much importance, Chicago being the great grain market and storage point. The constitution of Pennsylvania of 1873 is not quite so long as that of Illinois, but is divided into eighteen Articles. Substantially the same ground is covered though with less particularity. Though the state has very large cities the article on cities and city charters has but three short sections, authorizing cities to be chartered when the people vote in favor of it and have 10,000 inhabitants, requiring that debt shall not be created by any municipal commission, except in pursuance of an appropriation previously made, and that an inviolable sinking fund shall be created for the payment of funded debts. Separate articles are devoted to Private Corporations, Railroads and Canals. The granting of passes, except to employees, is prohibited, but no penalty is attached to its violation.

State constitutions, except in their distribution of the powers of government, cannot be said to have reached any settled type. The rapid growth of cities and the increasing importance of corporations, furnish subjects not yet satisfactorily adjusted.

The general idea of the governmental system of the United States is now quite fully and logically carried into practical operation in the states and nation. Matters of general concern to all the states are entrusted to the Federal Government. The extreme conservatism of the provision of the Constitution of the United States on the subject of amendments

seriously retards the correction of its defects. The requirement of a two-thirds vote of each branch of Congress and ratification by three-fourths of the states, seems an unreasonable restriction on the will of majorities. The constitution requires the House of Representatives to be elected by the people of the states, and the members are now usually chosen by districts, the boundaries of which are fixed by the state legislature, though in some cases they are elected by the electors of the whole state. The Constitution of the United States provides for the election of president and vice-president by electors chosen for that purpose, but the people have adopted a system which renders the work of the electors a mere matter of form. The electors are named by party conventions held in the several states and are expected to vote for the candidate named by that party in its national convention. No instance has yet occurred in the history of the republic of a presidential elector betraying his party and voting for a different candidate. No official of a state or the nation is more truly selected by the people than the president. The great powers conferred on him and the exalted rank of the office challenge the attention of all the people to the merits of proposed candidates, and personal worth is an important element, though not equal in its influence on the voters to that of the party name.

It is a source of great satisfaction to Americans that the presidential office has always been filled by a man of high character and good ability. The names of most of the presidents would have appeared among the illustrious men of the country, if they had not been chosen to that high office. The masses of the people take more pride in the president than in any other public official and, as a rule, have been better satisfied with the manner in which he has discharged his duties. More than a century of elective presidents has confirmed the wisdom of trusting the people to choose their chief magistrate.

At the time of the Revolution the judiciary took no leading part in public affairs. From the earliest times of the British monarchy they were appointees of the crown. When the

Constitution of the United States was framed, the existing system was continued without change except of the appointing power. Subsequent experience has however disclosed its defects, and the states have substituted a judiciary elective for fixed terms in place of an appointive one for life.

The constant tendency to restrict the powers of the legislatures, so strongly manifested in the state constitutions, has not been exhibited with reference to executive departments, which have been multiplied and their functions extended, with no added restrictions of note beyond making all the chief officers in the states elective. The legislatures have generally been relied on to provide all necessary checks on executive action.

As the power of the legislatures has been restricted by constitutional inhibitions, the power of the courts has grown, though without any express constitutional authority. The system of written constitutions makes a division of the laws into constitutional, which may not be violated by any one and can only be changed by the people, and legislative, which the legislature may change at will. In the early days the question arose whether a court had the right to declare an act of congress or of a state legislature void, if in conflict with the constitution, and it was very logically held that it had. Though in the early history of the country the courts were exceedingly loth to nullify legislative acts, the constant exercise of the power to do so has established a practice, now very prevalent, and no act of the legislature, materially affecting great private interests, is now regarded as law till its constitutionality has been passed on by the court of last resort. The Federal Courts are especially free in disregarding and nullifying acts of state legislatures on constitutional grounds, and have even gone so far, in construing acts restricting the charges of public service corporations, as to sit in judgment on the reasonableness of the rates established by the legislature, thus substituting their own judgment in a matter as to which minds naturally differ, for that of the law-making body. It apparently has escaped the attention of constitution makers, that they were thus so greatly exalting the power of

the courts. As the courts pass judgment in most of the states only on questions arising in cases coming before them, and never on abstract questions of law, it often happens that an act of the Legislature remains for years printed in the statute books as a valid enactment, and is then declared by the courts of no effect. Neither the common citizen nor the professional lawyer can ever tell with absolute certainty what a court may determine in such a case. It is always presumed that the members of the Legislature are as familiar with the constitution under which they act as the courts, and that they as honestly observe its limitations, yet the courts may now be relied on to nullify a considerable percentage of legislative acts affecting property rights. No such inconvenience attends the system of any other great country. It grows out of the desire to restrict governmental powers, yet it has resulted in exalting the power of that branch of the government least subject to popular control, and in the case of the Federal Judiciary, altogether beyond the peoples' chastening hand. It would seem that some system should be adopted under which all acts of Congress and state Legislatures will pass scrutiny and judgment as to their constitutionality, before they are given effect, and that thereafter they shall not be open to challenge on constitutional grounds. The courts of law cannot be always trusted to be the final arbiters, not merely as to the powers of the legislative and executive departments of governments, but as to their own also. Perhaps it might be well to have all constitutional questions of this kind passed on by a tribunal representing all three departments of the government, or by an independent one named by the people. The constitution of Belgium provides that authoritative interpretation of the law belongs only to the law-making power.

The experience of 126 years under the United States Constitution, during which the territory has been extended not only across the continent, and over Alaska to the Polar Sea, but also into the Asiatic Islands, the number of states increased from thirteen to forty-eight, the population from 3,000,000 to more than 93,000,000, exclusive of the Philippine

Islands, with a yearly influx now by immigration running as high as 1,000,000, made up of people of all nations, and the strain of a terrific civil war, have not pointed out any radical defect in the general framework of the republic. Improvements can always be made in any government, but the system itself points out how they may be made peacefully. The most surprising thing connected with American history is that so little modification of the constitution resulted from the Civil War. The seceded states were simply brought back into more harmonious relations with the others. The framework of the state governments as above pointed out has undergone far greater changes, quite uniformly in the direction of an extension of the principle of local self-government. The Federal Government is one of limited powers, confined to matters of general concern. The state governments, while restricted in their functions in certain particulars by the Constitution of the United States, and still more by the state constitutions, yet have a far wider field of action and affect the interests of their citizens at many more points. It is the state Legislature that has power to pass laws defining crimes in general, and fixing the punishments for them, and that

- regulates the property rights of its citizens. At first the legislatures were given power to regulate local affairs by special acts, and some of this power is still retained and exercised, but the tendency still seems to be in the direction of further constitutional restrictions on the state legislatures and greater local independence. State legislatures everywhere are subjects of severe criticism. They are always surrounded by powerful corrupting influences. The railroad, insurance and other great corporations are always either asking legislation in their special interest or striving to prevent acts curtailing their privileges or casting burdens on them. This leads to the custom of granting free passes and other special favors to the members and to charges of bribery with money, doubtless sometimes based on facts. Many efforts have been made to remedy these evils, and the use of passes has been greatly curtailed. So long as such great interests are in private hands, managed for personal gain, it is doubtful whether any

perfect remedy can be found. State legislatures are not so vile however as they are sometimes painted. They are usually made up of very fair representatives of both the intelligence and the integrity of the people. The State executive officers have generally been men of fair character, who have managed their offices to the satisfaction of the public. Some scandals are always incident to the management of the great charitable and penal institutions, and there are sometimes charges of cruelty in prisons and asylums, but the rule is that prisoners and patients are treated kindly, and their needs well and even generously supplied.

Next in order below the state government comes the county. All the states are divided into counties varying in number from three in Delaware to two hundred and forty-six in Texas. The size of counties is far more nearly uniform than that of the States, being generally about as large as will admit of driving with teams from every part to a central point in a day. Some of the western states, however, where population is very sparse, have very large counties, many times greater than such states as Rhode Island and Delaware. Each county has its court house and its quota of county officers occupying it. Here at stated times the great court of general original jurisdiction is held, commonly termed either the district or circuit court; the probate court and special courts in the more populous counties. The representative body transacting the county business, usually possessing a mixture of legislative, executive and judicial functions, also meets here at stated times. In New England, New York and other northern states these bodies are made up of members elected by the towns, and are called the Boards of Supervisors in New York. In Ohio and many other states the members are elected by districts and the board is made up of a much smaller number, three only in Kansas, and are called Boards of County Commissioners. In the south and some western states they are chosen in the same manner, but the members are called judges and the body is styled the County Court. There is much diversity in the scope of the duties and powers of these tribunals, which are almost if not quite universally fixed by

the legislature, rather than by constitutional provision. In the East the laying out and repairing of roads and the construction and maintenance of bridges are generally under the supervision of the towns, while in the West they are partially or wholly under the direction of the county boards. The maintenance of the courthouse and other county institutions, the levying of county taxes and the expenditure of county money are under the direction of this tribunal, and it stands as the general representative of county interests. Each county elects its own sheriff, whose principal functions are to serve and execute the processes of the courts, of which he is the chief executive officer, and to collect delinquent taxes. The office, though still important, does not rank as high as formerly in the colonies and in England. Each county also elects its recorder of deeds, who records all instruments affecting the title to land and mortgages on personal property and such others as the law may require to be recorded. In Connecticut, and possibly some other of the eastern states, these records are kept by the town clerks instead of a county officer. There are usually also a county treasurer, clerk, coroner, probate judge, superintendent of schools, surveyor, clerk of the court and attorney. Other officers are sometimes added. The county organization is of prime importance in the actual operation of the governmental system. It is here that the law is administered, and that the juries pass on the facts in civil causes triable before them, and on the merits of criminal prosecutions. The roads, bridges, local charities and improvements of various kinds are mainly under county control. Except in counties containing large cities, the conduct of county affairs is usually very closely watched by the people and is in main quite satisfactory. Great abuses seldom exist and when they do are soon remedied.

The importance of the towns or townships as municipal organizations varies greatly. In the New England states in Revolutionary times the towns were the political units. The people gathered in their town meetings, consulted, took such action as seemed advisable and selected their representatives and agents to carry out their will. This system did not pre-

vail in the South, where the county was the unit. At present there is a tendency to approximate a common type, with township organizations attending to the repair of roads and bridges, the temporary relief of the poor and some other special matters. The most important function of the town or township is in connection with the elections. There is always one or more election precincts in each of them, and the township officers are usually charged with the duty of providing the polling places and making other necessary arrangements for collecting the votes and forwarding the returns. Each town has one or more justices of the peace, with power to decide petty causes and issue warrants for the arrest of persons charged with crime. Within the towns are road and school districts. The system of repairing roads under the direction of an overseer appointed for a small district, is not generally satisfactory, owing to the unsystematic and often shiftless manner in which the work is done. Where a road poll tax is required or property tax is allowed to be worked out, it often happens that the smallest fund is available for the districts requiring the largest expenditure, and thus the roads are worked often to their injury where work is not needed and left in bad condition in less rich or populous districts. The tendency now is in the direction of larger districts and a regular levy for road purposes.

The most important of all the functions of the state is that connected with the education of the young. The system of district schools is now substantially universal over the whole United States. The whole country is divided into school districts of such convenient size as will enable all the children in it to attend easily; usually two miles is as far as any child needs to go to reach the school house. The affairs of the district are determined by the people in a general meeting at which, in many states, women as well as men are now allowed to vote. The size and cost of school buildings, the number of teachers, the length of school terms and other particulars are generally determined by the people at the annual district meeting. It is a noticeable fact, that in no other public matter is so much liberality shown, and the school tax

imposed on themselves by the voters is always the heaviest of all borne by the people. Comfortable school buildings and as good teachers as the district can afford are always demanded. This system of direct regulation of schools by the people applies only to rural districts. In the cities, where many teachers are required, the schools are in charge of boards elected for that purpose.

In 1790 the urban population, inhabiting cities of 8,000 or more, is given as only three and three-tenths per cent of the whole. New York City alone now contains more people than there were in all the colonies at the date of the adoption of the constitution. The problem of municipal government was not then one of great concern. It is now one of the most complex that confronts the legislator. On the farm or in the small town the family supplies most of its wants in its own way. For water wells and cisterns are dug or natural springs and water courses afford a supply. Lights are supplied in a more or less primitive fashion, but always by the individual in his own way. To communicate with his neighbors and the outside world he formerly walked or drove along the public highway. Now he uses the telephone and rural mail service. No neighbor cuts off his light or air by a new building, nor is he usually much affected by what is done on his neighbor's ground. In the city conditions are greatly changed. The individual must rely on some one else to supply nearly all his wants. The universal tendency of the city is to divide labor, specialize and become dependent, each one on a multitude of others. Water, light, heat, conveyance from point to point, means of communication and security against fire and floods, must all be provided by some general agency, public or private. In rural communities there are poor people, but none with inordinate wealth. The city breeds the multi-millionaire and the multitude of paupers. In the cities are to be found the dens of the criminals, the filthy houses of prostitution, the conscienceless gamblers and swindlers of all kinds. Selfishness and vice grow up together, children of a common parent, though one may dwell in a palace and the other in a wretched tene-

ment. In contrast with rural conditions the bulk of the property is owned by the few and the great multitude work for wages, live in rented houses, and have little or no provision made for a time of adversity. A marked characteristic of the American city dweller is that he strives to appear as well as his neighbor. He rents a more expensive house and wears dearer clothing than his income warrants. His economies if any are such as his neighbor cannot see. The tendency of this mode of living is to produce a constant strain for appearances, which results in duller moral perceptions and a debasement of ideals. The strength and safety gained by self-denial and frank admission of the truth, are sacrificed to a foolish desire to appear more prosperous than he in fact is. This class of people of necessity are always at someone's mercy, and generally become, if they do not begin as, servants of others. The percentage of Americans, who refuse to gain independence by the slow sure route of industry and rigid economy, is distressingly large. The vain hope of some stroke of fortune, which will make good all that could be gained by thrift, keeps multitudes in poverty. While these propensities play so important a part, the city problem would not be nearly solved if they were eliminated. It must be conceded that the satisfactory government of great cities still remains an unsolved problem in America. State legislatures, under most of the state constitutions, are vested with general powers of legislation for them, and may create such offices as they think best and prescribe the mode of filling them. State legislatures, however, are seldom in a position to judge wisely of the needs of a city, and all schemes to govern through state appointees have resulted in gross misgovernment and corruption. It is fully demonstrated that the people will govern themselves better than any agency from without, but it is not demonstrated that they will do very well under prevailing methods and conditions. The general framework of the city government is similar to that of all the other governmental agencies. There is an executive head, usually called the mayor, and a body vested with legislative powers, usually termed the council. This

consists sometimes of one and sometimes of two chambers, the very large cities usually having an upper and a lower house, while the smaller generally have but one. The mayor and council are vested with power to enact ordinances for the regulation of police affairs in the city, and for the management of its property, the regulation of streets, public grounds, water fronts, and other places to which the people resort. They may impose penalties, usually limited to a small fine or a brief term of confinement, for violation of their ordinances. To the mayor and council the people look for management of the supply of water, light, gas, electricity, for pavement of the streets, construction of bridges, sidewalks, sewers, dykes, public buildings, markets and numberless other conveniences, and the regulation of all public service corporations, so far as their limited powers will enable them to do so. Recently what is termed the commission form of government has been adopted by some cities under which a single board of commissioners elected from the city at large exercises all legislative and administrative functions. In the small places the list of executive officers includes the mayor, marshal or chief of police, street commissioner, fire warden, police judge, clerk and such other police officers as the situation calls for. In the large cities, besides these there is a long list of officials connected with each department of the city government. Large forces are constantly employed in the departments of the police, streets, parks, sewers, health, buildings, waterworks (where owned by the city), and others according to the particular needs of the city. Into each large city railroads are built, requiring terminal facilities and privileges of various kind, and subject to taxation as is other property. The various corporations, owning these or other great properties, find it necessary, from time to time, to apply to the city for special privileges of various kinds, often of great value. The use of streets, alleys and public grounds is often desired and frequently granted without compensation. Street railway companies, desiring to occupy streets with their lines, call on the council for franchises, worth millions to them. Water, gas, telephone, telegraph,

electric light and power companies and other corporations of many kinds, conducting great public conveniences, go to the council for permits to use the streets and other public property and for exclusive franchises and privileges of many kinds. The necessities of the public in a city call for heavy expenditures on streets, parks, sewers, public buildings, bridges, viaducts, police and sanitary supervision. These, added to the other expenses of the city government, necessarily makes city taxes high, where no revenue is collected in return for special privileges. The people of cities find the same difficulty experienced by county, state and national governments in their dealings with great private corporations. The public agencies, designed to supervise and regulate the corporations, are in fact often, if not usually, supervised and controlled by the corporations. The reason for this lies mainly in the superior qualification of the agents of the corporations for dealing with the special subjects under consideration. Strong personal interests, actively at work at all times, accomplish the purposes of the corporations. In dealing with any question relating to the operation of a special branch of business, like furnishing water, gas, or electricity, or operating a railroad or street railway, the company's managers are reasonably certain to be much better informed as to the details of the business than the members of a city council, chosen from men in the various occupations, indiscriminately, with no special knowledge or experience concerning any of these particular matters. City councilmen are frequently charged with having acted corruptly in granting corporate franchises, when they have merely been misled through ignorance. Reason would indicate and experience proves that the operations of great business corporations cannot be efficiently supervised or regulated, except by men specially qualified by education and experience for the work. The idea of extending the principle of popular government to the public ownership and operation of street railways, water-works, gas works, telephones, telegraphs, railways, coal mines and other public utilities, which are either natural monopolies or likely to be artificially made such, seems to be

gaining favor. Whenever upright public agents, who fully understand the business, are placed in charge of works of this character, the results are satisfactory; but city governments, far more than those of any other political division, seem destined to fall into either corrupt or inefficient hands. The reason for this appears to be that less care is exercised by city voters in the choice of public officers than by the people of the rural districts. This may fairly be accounted for by the difference in the circumstances of the people. Probably the people of the cities are as intelligent and well informed as the country people, but they are more inclined to give their exclusive attention to their personal affairs and neglect public interests. The successful merchant, as a rule, eschews politics, because he has no time to spare and believes it will hurt his business to take sides in the election. Busy men having large establishments of other kinds are inclined to take the same view. These classes do not constitute a large percentage of the voters. The wage earners in a great city are always in a vast majority. The concentration of wealth, which steadily increases with the growth of cities, is such that the proportion of independent property owners is small. The tenant wage earner, who pays little or no tax, feels little concern about public expenditures or the management of the city's business. Thus, from different causes, we have two great classes of voters indifferent in the exercise of their duties as citizens. The result is that a small class of men, who devote their time to city politics and seek personal gain from the results of the elections, often control the affairs of a great city for years. Where the motives of the managers of opposing political organizations are the same, namely, to gain possession of the offices merely for the profit that can be made out of them, no very exalted standard of public service can be expected, whichever party wins. Improvement in the conduct of city governments and the elevation of their moral tone can only come through the active efforts of the best classes of citizens, involving some sacrifices of time and money. Perhaps the assumption by the cities of greater business interests would tend to increased attention on the part of the voters to the choice of city officials.

Corporations

Notwithstanding the fact that a very large part of all the men, women and even children of the United States are stockholders in or members of one or more corporations, there is much confusion of thought as to the attributes and usefulness of corporations. This doubtless arises from the great variety of functions performed by different classes of them. In the American system there is the city, a municipal corporation exercising merely public functions, through the agency of officers chosen by all the voters, in many states including the women, yet held to the same accountability for wilful misconduct or negligence connected with the discharge of its functions as a private corporation. It combines substantially all the attributes of a local government and a private corporation. Then there are the counties, townships and school districts, termed quasi-corporations, with less corporate responsibility and less compact and forceful organizations. The state and nation are bodies corporate, but not usually regarded as corporations. Of the corporations termed private there are many classes. Formerly in Europe the most important division was into ecclesiastical and lay, the former conferring special privileges on some church functionary or religious body, and the latter artificial powers or privileges for secular purposes. In the time of Henry VII of England the ecclesiastical corporations were far more numerous and important than the lay. They were all dependent on the great Papal organization of Rome, corporate combinations for business purposes had not yet become numerous. There are now in the United States a very great number of religious corporations with much diversity in their functions. Here as elsewhere the great Church of Rome has its adherents, its churches, schools and other property, and priesthood high and low. The governmental forces, however, are nowhere exerted in its interests, but for its revenue it relies entirely on the voluntary contributions of its members. The only compulsion it can exercise is such as acts through the religious ideas of the people and the force of church influence and

association. The various Protestant church corporations, modeled more or less after the Roman according to the views of the leaders, also stand in the same relation to the general public, without state support. In the management of their affairs, though all profess to be guided by the law as written in the Bible and to believe implicitly in all its teachings, the governing force differs, being either wholly in the clergy, as in the Roman, in representative bodies, as the Presbyterian, or in the congregation. Perhaps the most potent and efficient church organization within its limited field of action is the Mormon, which for nearly half a century maintained at Salt Lake City a remarkable hierarchy, which combined the functions of a religious organization, a political government and a coöperative business corporation. Though not granted any peculiar charter privileges by any state or by the national government, it exercised these powers by the consent and with the full support of the community. The leaders of the church made up their own charter, which became applicable to such and such only as chose to join them.

The American spirit of liberty finds expression in the religious organizations, and the diversity of individual views has led to a constant splitting up of churches. Old religious dogmas are constantly being discarded, and moral teachings and the spiritual essence of Christianity are demanded from the pulpit, rather than threats of damnation for heresy and promises of safe transit to a realm of bliss as a reward for faith in church dogmas. Though efforts are constantly made to unite and combine the strength of the churches to accomplish common ends, it is apparent that church corporations lack cohesive force, and that the general tendency is toward disintegration. The reason for this is apparent. The old doctrines, which exerted such powerful influence on the public, are no longer accepted as truth. Heaven is not so alluring and hell has lost its terrors. In the churches a leading difficulty now experienced is to get voluntary contributions for the support of the ministers, the building, furnishing and maintenance of the churches, and for missionary and other church purposes. There is some charitable work

added, but as an incident rather than the primary object of the organization. The secret of the success of the early Christians lay in the brotherly feeling existing among them and in their mutual help. The remarkable hold of the Church of Jesus Christ of Latter-day Saints, as the Mormon church is termed, on its members, was largely due to the advantages gained by its coöperative business functions, through which it furnished its people with a system of exchange of products among themselves and with the outside world without the use of money. It recognized the fact that all wealth comes as the result of labor well applied and economy. The great temple was built and paid for by a people having no money to contribute. A system of checks or certificates, issued by the authorities for labor done or produce or materials furnished or deposited in the tithing house, filled the place of a medium of exchange—being redeemable in goods at the tithing house. Beyond doubt the moral teachings of the clergy from the pulpits have a great educational value. The early Christians, while they fed, lodged and clothed those who preached the new doctrine, did not maintain a salaried clergy, nor expensive temples of worship. The weakness of all the churches is evidenced by their inability to grapple with practical difficulties and accomplish results. To call on church members for large contributions to church funds on Sunday, to be made good during the week by artifice or wrongdoing, does not tend to advance moral standards. The practical problem, of bringing about just relations between the people in their every day affairs, is one for which many of the clergy have neither taste nor capacity.

We have seen that the first settlements in the United States were effected through corporations, chartered by the kings of England, with grants of full governmental powers, though under the sovereignty of the British crown. The purpose of these charters was to enlist the capital and energy of the members of the corporation in a new, difficult and dangerous enterprise, designed to add strength to the British empire and yield profit to the members. The charters authorized the corporators to organize forces in England, to transport

them to the designated parts of America, take forcible possession of the country and make war on any who might oppose them. The corporations performed the tasks of organization in England, and brought together the necessary combination of money to furnish and equip ships and men to undertake the new settlements. After the settlements were established either the corporation moved to America and there discharged its functions as the governmental organization of the colony, as in Massachusetts, or went out of existence, leaving to the people in the colonies more or less of their charter privileges, according to the terms of that affecting the particular colony and the conduct of the British ministry with reference to it.

The science of government is the science of organizing the whole people of some portion of the earth for common purposes, and the organization of municipal corporations is merely a part of the governmental work. Private corporations, however, for the accomplishment of special purposes, are formed in great variety by the voluntary association of individuals, often citizens of different nations and residing at great distances from each other. In Europe, till recent times, corporate franchises were granted by the kings, and in England sometimes by act of parliament, to particular persons or to them and such as they might associate with them, as a special favor. In the United States corporate franchises were at first granted by special acts, but the favoritism necessarily engendered by this system was soon perceived. The practice was generally discontinued and in most states is now prohibited by constitutional inhibition. Corporations for almost any purpose not immoral may now be formed under general laws in any state of the Union. They are in fact formed to carry on all kinds of business, ranging from those which the constitutions guarantee any citizen full liberty to conduct, such as carrying on small commercial, manufacturing, mining or agricultural concerns, by systems differing in no important respect from and with no greater facilities than, those enjoyed by single individuals or partnerships, to great railroad, telegraph and mining companies, which have

many elements of governmental power and perform great public functions.

Perhaps the classification of corporations now of most practical importance is into those for profit, having a capital stock on which dividends are expected, and those for social, charitable, religious, educational and other purposes, yielding no profit to the members. Corporations for profit are divided into those discharging public functions and those merely conducting an ordinary private business, and also into those distributing their gains on a purely capitalistic basis pro rata on the capital contributed, and those distributing profits on the basis of amount of dealings with the corporation on which the profits have been realized. Insurance corporations are very numerous and are divided into the purely capitalistic, and the fraternal and coöperative, designed merely to distribute the losses of individuals among many without paying profits on capital stock. These various classifications are often difficult of application, because of the great diversity both of purposes for which the corporations are formed and of methods of dealing with their stockholders and members. The great public service corporations exercise most governmental powers, have the largest capital and employ the most people of all. The construction and operation of railroads on the continent of Europe is generally regarded as a purely public function, and most of the railroads there are owned and operated by the governments. In England and the United States they are all owned and operated by private corporations for profit, organized on a purely capitalistic basis. In the early history of railroad building in America the construction of lines of road was sometimes undertaken by the states, but in no instance was the undertaking financially successful. The great outlay required called for the combination of the capital of many individuals. This could not be readily obtained for untried ventures, involving so large an outlay. To induce the thrifty to put their money into these enterprises, public contributions were offered with the greatest liberality. States, counties, cities, towns and villages voted bonds to be either exchanged for

the stock or bonds of the railroad company, or donated to it outright, in consideration of the construction of some designated line of road. The indirect benefits resulting from the transportation facilities furnished by the road were generally regarded as a full equivalent for the bonds voted. This system of public subscriptions to the capital stock of railroad corporations led to the adoption of a policy by the companies of making large issues of mortgage bonds to raise the requisite capital, and to the distribution of the capital stock among the promoters of the scheme and the purchasers of its bonds without the payment of any money for the stock. The municipalities subscribing for the stock thus became the only paying stockholders and their stock had little or no market value. The inordinate profits realized by the promoters of these enterprises, and the keen rivalry of cities and towns in their efforts to bring in new railroads, early led to the greatest activity in the organization of railroad corporations and the construction of new lines of road. No other country has so many miles of railroad and nowhere else has there been such vigor exhibited in pushing forward new enterprises. While the system followed has had the advantages of rapid development and a remarkable exhibition of inventive genius and engineering skill in the improvement of rolling stock and machinery and the construction of roads under all kinds of difficulties; it has been attended with many and serious wrongs and inconveniences, among which are corrupting influences exerted on all departments of the government, unjust treatment of persons and localities, frauds upon stockholders, oppression of employees and patrons of the road, and a recklessness of human life in the movement of trains quite peculiar to American railways. In early days it was so vast an enterprise to build a railroad from the seaboard to the great lakes, that several corporations were required to construct it in parts. Now lines aggregating more than 10,000 miles are under a single management. The growth of railways, which, during the period of most rapid construction, brought into existence a great number of new corporations, has now taken a decided

turn in the direction of consolidation, not only of connecting but also of competing lines. The necessity for separate charters, in each state where a new line was to be constructed, in order to exercise the right of eminent domain and condemn the ground required for the uses of the road, led to the taking out of a number of charters for each long line of road. Most states now authorize the consolidation of connecting lines, built under charters from other states, and the manifold advantages of a single management, covering a large system of roads, have led to consolidation upon consolidation. To the corporation there are the great economies of reduced cost of management and increased business. To the public there is the advantage of transportation for long distances under a contract with a single company, without the vexations attending transfers from one line to another. The public like to ride on a through train from starting point to destination, and railroad managers like to supply such trains. All interests, public and private, can be better served by long lines with many branches, than by separate concerns. Against these manifest advantages stand the fear and menace of too much power to aid or crush the individual or locality and to influence public officials. The logic of consolidation has been more fully exhibited with reference to the telegraph than the railroads. Whereas in the early history of the telegraph there were many separate companies, now a single corporation has a practically complete network extending all over the United States and much of Canada with cable lines to Europe and the West Indies. Telegraphing, so nearly allied to the postal system in the service it performs, is now a governmental function in all the great European countries, including the British Isles. It is a natural monopoly, requiring a single management for efficiency. The same principles apply to the telephone, which, at first used only in limited areas for short distances, has now developed into a vast network connecting distant cities, towns and country homes. Waterworks necessarily have a limited field of operation, but like the railroad, telegraph and telephone, require the use of the public streets and the exercise

of the power of eminent domain for their establishment, and are natural monopolies for the district served, admitting no advantage from competition. Gas, electric light and street railway companies discharge functions of substantially the same character. All these are public service corporations, exercising powers strictly governmental in character within long established principles. The lands on which their works are constructed can and are forcibly taken from private owners against their will, because public needs require them. But the use of the right of eminent domain in the construction of their works is neither the only nor the greatest governmental function exercised by these corporations. The railway companies own the great highways of the country over which its vast commerce passes. They construct and maintain the roadway, and generally the vehicles used on it. No one can ride or transport his property over it without their aid, nor except on the terms they impose. In countries of a low order of civilization the public highways, and often the rivers, are held as the property of some ruler or petty lord, and tribute is extorted at his pleasure from all who pass along them. The system followed in the United States by the railroad corporations was to charge passengers and shippers such rates as in the judgment of the railroad officials will produce the largest net revenue. Attempts at direct legislative control, to make charges reasonable and prevent discriminations for the enrichment of a few and the impoverishment of the many, have been made from time to time, but without satisfactory results. Most members of most legislatures are ignorant of the facts and in no position to make rules which will work well in practice. Most bills of this character fail to pass, mainly because members recognize their own unfitness to act on the subject, and in a less degree from the corrupting influences exerted by the railroad lobby. Such bills as do pass are mostly nullified by the courts, especially of the United States, which in determining the reasonableness of such legislation have assumed legislative functions. Regulation of rates and operation through the Interstate Commerce Commission and similar state commissions is producing more satisfactory results.

The law, which fixed the terms on which the citizen might travel over this class of highways or transport his property to or from his market, was made by or under the direction of the board of directors of the railroad used. Now these rates are subjected to revision to some extent by the commissions.

Still another governmental function, reaching in some instances even farther than any named, is that of determining where towns may be built and where not; stimulating the activities of favored localities and destroying towns already built. Small business centers, little towns, are built wherever the railroad company establishes a depot. Considerable towns grow up at its division points and around its shops. A change in the location of one of these generally means financial ruin to many in the deserted town, and greatly increased activity at the new point. Neither state nor nation have ever attempted any check on such changes, or any requirement of compensation to injured parties. There are hundreds of towns scattered throughout the United States, which are mainly dependent on some one railroad company for the employment of a large part of their people. Whenever such a change is made as to force its employees to reside elsewhere, residences must be abandoned and business property rendered valueless.

In its dealings with its vast army of employees it may be said that the railroad corporation merely stands in the same position as any other employer, but this is only partially true. In many places the railroad company has a monopoly of the labor market and is therefore in a position to fix prices. The organization of the different classes of railway employees into unions has given them the added strength which organization and combined effort always bring. This system however is attended with its disadvantages to both parties and also to the public. Whenever there is an open breach between the company and the men and a strike follows, the business of the company is paralyzed, the men earn no wages, the company gets no profits, and the activities of the public dependent on it cease with the attendant loss of all that might have

been gained if no disturbance had occurred. Whatever causes enforced idleness results in a loss to the public equal to all that would have been produced and performed if activities had continued normally. Something of the same principles apply to all the other public service corporations, but the railroads are of overshadowing importance, and the correction of the evils connected with their operations are still far from a satisfactory solution. No other question connected with popular rights, now under consideration by the American people, compares in urgency and importance with that of the proper mode of conducting and regulating the businesses now under control of public service corporations.

Banking corporations occupy a very important place in the business of the country. National banks, authorized to issue bills designed to circulate as money and the payment of which is guaranteed by the United States, discharge a strictly governmental function and enjoy the special privilege of issuing and drawing interest on a limited amount of credit money. Ordinary commercial banks organized under state laws, which receive deposits, loan money and buy and sell exchange and securities, discharge an important function, intermediate in character between the public and private. They are now generally under state supervision through a state commissioner, who inspects their books and securities and compels compliance with the law. The ordinary bank is organized by the people of the town in which it is located, who subscribe for its stock and name the board of directors, which employs a cashier and whatever other agents the business may require. It is a useful agency, by which the money in circulation is made to perform more service and to effect many more exchanges and payments than if left scattered in the pockets of the depositors. It also supplements the currency by the use of accounts, checks and drafts, which pass from one customer to another and effect payments by charge and credit on the books without the actual use of any money. So long as confidence in the solvency of the bank is maintained, checks drawn by depositors against their accounts answer all the purposes of money to those who merely desire to increase the balance of their credits in the bank.

No subject connected with state and national legislation is of more importance than that of guarding against the recurrence of financial panics. Congress has recently provided for a system of reserve banks, designed to combine the strength of many, and provide extra issues of currency to meet emergencies. Some states provide for a state guarantee of deposits based on a reserve fund accumulated from contributions made by the banks. It is too early to speak confidently of the permanent value of these expedients, but they appear to be useful.

The insurance of lives, limbs and property has developed a greater variety of corporations than any other branch of business. The banks and the great public service corporations are mostly purely capitalistic organizations, in which representation is based on the amount of stock held.

The insurance corporations present all forms, from the strictly capitalistic to the purely mutual and coöperative. The business of life insurance has developed the largest aggregations of capital, single concerns now reporting hundreds of millions of dollars in assets. Few if any of these companies profess to be purely capitalistic. Nearly all promise to divide net earnings among policyholders. The great concerns pay high salaries, and often still higher compensations in the way of commissions, to their officers and agents. The management falls into the hands of a board of directors, who usually find it easy to perpetuate their authority, no matter how liberal they may be in fixing salaries for themselves and their friends. They alone keep in touch with the members of the company and know their names and addresses, and it is usually easy for them to gather proxies enough to reëlect themselves at each annual meeting. The receipts from premiums on new policies are more than sufficient to pay losses under old ones, and the business and assets continue to grow without the company being subjected to any call which really tests its solvency. At the other end of the line are what are termed the fraternal companies, which in the simplest form merely call on each member of the company, or of the class of policy holders to which the deceased member belonged, for a stated contribution to be paid to the beneficiary. A small sum is

collected from each member to pay current expenses. There is no capital stock and no accumulation of funds. Most fraternal orders now accumulate funds from which losses can be paid promptly, without waiting to collect from members, and fix a regular rate of yearly payments sufficient to cover losses and accumulate an adequate reserve fund. Life insurance finds great favor with the American public, because it relieves the distress of families suffering from the loss of their bread winners. The early system was to merely pay a lump sum, specified in the policy, in case of death, and this is still the prevailing one, but a considerable sum in cash, paid to persons unaccustomed to the investment of money, usually results in the loss of much of it through unwise investments. Policies of insurance are now issued, which provide for the payment of annuities for life or a specified period of years. So large a part of the people invest in insurance, and the principle of providing against the day of sorrow and calamity grows in favor so steadily in enlightened states, that it would now seem to be a legitimate function of the state. All the states have insurance departments to inspect and regulate the corporations. The principle of insurance being merely the distribution of an individual loss among many, so that no one bears a heavy burden, is so simple that it could easily be carried out through a public insurance office. The business of fire insurance is also divided between capitalistic corporations and mutual or coöperative companies, the leading distinction between the two being that the former is organized with a capital stock and sells its policies at fixed rates, while the latter undertakes to apportion losses among its members, adding only the actual cost of conducting the business. The great life insurance corporations have become among the greatest moneyed institutions in the country, and the organization of new corporations, which have adopted some new feature or made some modification of an old one, goes steadily on. Many insurance companies combine an organization for social purposes with the business of life insurance, and many of these also add other charitable features, for the relief of the sick, the burial of the dead and the care of widows and

orphans. In nothing is the genius of the American people for organization and innovation more clearly exhibited than in its multitude of insurance and fraternal companies. The tendency in these organizations seems to be in the direction of complexity and diversity, rather than simplicity according to some standard.

The business of manufacturing in most of its branches is now mainly in the hands of corporations. These range in size and importance all the way from small concerns owned by a very few persons, with only a few hundreds of dollars of capital, to the great steel corporation with its billion dollar capitalization. They may be merely small competing companies or vast monopolies. Mining also is now done almost wholly by corporations, ranging from the little concern, operating a particular mine, to the Standard Oil Company which controls a large part of the world's supply of mineral oil. Commercial corporations in endless variety also exist, ranging from the coöperative country store to the so-called trusts, formed to monopolize one or more products.

Besides these various classes of corporations, designed to benefit their members in some material way, there are the charitable, social and educational ones, from which the contributors hope for no personal gain but seek to do good to others, through the maintenance of hospitals, asylums, clubs, schools, libraries, reading rooms, and other conveniences. The leading part now played in all the business of the country by corporations, the marked tendency toward great combinations and consolidations, and the inability of the state and national authorities to curb them, have led to much strong denunciation of corporations indiscriminately, and to a feeling of distrust and intense hostility in many quarters. The great corporate aggregations are now engaged, either in transportation, manufacturing, trade, insurance, banking or in the management of public utilities. The agricultural population, the wage earners, the professional men and those in miscellaneous callings, are not organized into strong, compact corporations, designed to further their interests. As governmental organizations seem indispensable to the security of the

individual and the maintenance of peace at home and abroad, so business organization is necessary to secure to the individual just returns for his work.

The wage earners in certain lines have achieved remarkable success in the maintenance of labor organizations, but while some of these take the form of corporations, they are not held together by any strong tie. Common interests and sympathy with each other constitute practically the only bond. The strength of the organization always depends on the completeness with which all the laborers in a particular line are bound together, so that all will act in concert. A single laborer, in dealing with a great corporation, can do no more than accept the company's terms of employment. All the employees of such a corporation, acting through their representatives, can secure such terms as general business conditions warrant. There are serious objections however to the general system of a few capitalists controlling great properties dealing with an army of laborers through their representatives. It quite frequently happens that one side or the other or both become unreasonable and an open breach follows, causing a cessation of work and the interruption, not only of the business of the corporation, but of all the public dependent on its operations. Sometimes a strike is followed by attempts to use force, by blows and bloodshed. It always entails heavy loss on the laborers, and usually on the company and the outside public. These conflicts are always destructive in character. Arbitration is one of the remedies proposed, but there is great difficulty in securing an impartial and competent tribunal to decide the issue. The question as to the rate of wages which ought to be paid is not susceptible of a definite answer, capable of mathematical demonstration. The revenues of a corporation fluctuate, and the necessary outlays increase and diminish. What percentage of gross revenues ought to go to labor and what to capital, and what is a fair return on invested capital, are matters on which the minds of men differ widely. If the capitalist as a separate factor could be eliminated and the stock of the corporation all be held by the employees, this particular trouble would be obviated, but the

questions between the several employees as to their respective rates of compensation, and with the general public as to rates of charges to them, would still remain. Even when this idea is carried to its extreme limit, so that the property of a corporation is owned by all the people who are in any manner interested in its business operations, the questions as to rates of compensation for services still remains. The coöperative corporations, the Rochdale stores and similar organizations, seek to solve the problem of establishing more just relations between all parties concerned by limiting profits on capital, establishing schedules of wages, promoting laborers and employees solely on a basis of merit, and returning to customers all excess of profits over the expenses and percentage allowed on the capital. The great fortunes, now such a marked feature in the United States, are mostly made in some manner from corporations. The disorganized mass of agricultural, wage earning and professional people, are at all times at a disadvantage in their dealings with strong combinations. They pay more than a just compensation for the services, and excessive profits on the wares of the corporation, and where they sell their products to it they get less than the market warrants.

The subject of business organization and combination is the leading one before the American public. As we have seen, the political system so far as the general structure and the leading principles of government are concerned, appears to be settled, but the question of efficiency in business organization and just relations and fair dealings between citizens in their every day life is as far from a satisfactory solution as ever. In considering the principles governing the purposes of corporations there are two things mainly to be regarded, efficiency and justice.

For efficiency in carrying forward a great enterprise, involving the accumulation and use of large capital and the employment of a great number of men, it is evident that the capitalistic system is the most vigorous in the existing state of popular education and public opinion. Combinations of accumulated capital for such a purpose can be much more easily formed than combinations of the necessary laborers

to do the work on their own account. Take the case of the construction of a railroad, a few great capitalists, or even a single one, can contribute the necessary money and through agents employ the required number of laborers and purchase the necessary materials to build it. There is little danger of divided counsel. When once it has been determined that the project shall be carried out, it moves steadily forward. Where bonds and stock are sold on the market to raise the money, the projectors still direct the operations, and if the project commends itself to smaller investors, little difficulty is experienced in accumulating funds as fast as needed to pay the laborers and buy the materials. After the road is built its business interests are to be considered. The board of directors of a purely capitalistic corporation is free to employ or discharge whomever it pleases. The selection of efficient employees is at the same time the most necessary and the most difficult thing required to insure successful management. Integrity, capacity, industry, and fidelity are demanded of every man who enters the service. The stockholders have first to choose a competent board of directors, and these have to outline the general policy of the company and employ efficient agents and managers to carry it out. If a corporation with the requisite capital and a sound purpose fails, it usually does so because of the dishonesty or inefficiency of its managers. Strictly first class men to conduct any enterprise are often hard to find, but it does not follow that they always or usually demand inordinate compensation. Great numbers of corporations, large and small, go to pieces year by year as a result of weakness at the head. The purely capitalistic corporation usually receives the watchful care of its principal stockholders, and through their vigilance is protected from the dishonesty and inefficiency of employees, but on the other hand this class of corporations stands more in a position of antagonism to its employees than the coöperative ones, and therefore requires greater vigilance in their supervision.

When the railroad is built it is found that its business may be greatly increased by extending the line from one or both ends and by branches reaching out into country that can be

made tributary. This may be effected by consolidating with lines already built, or by the construction of new ones. Consolidation is far more economical than the construction of competing lines. It is usually advantageous to the corporation on the score of economy, and to the public on that of efficiency of service. The purely capitalistic corporation, which needs to consult only a limited number of stockholders, can effect these combinations far more easily and readily than one organized along other lines, where more people with smaller interests must be consulted.

Great combinations in manufacturing and commercial enterprises, when carried to the point of a monopoly of a particular line of business, often bring great advantage, both from the reduction of operating expenses and from increased margins of profit on the articles produced or dealt in. Below this point the economies are often sufficient to give large gains. The purely capitalistic corporation requires of its employees merely that they understand all matters connected with their particular duties and perform the tasks assigned them. The compact between employer and employee calls for service on one side and wages on the other, and may generally be severed by either at any time. The coöperative organization has some points of efficiency which are superior to the capitalistic. It has the active support of more people and, when merely designed to transact a particular branch of business for its members at the cost of the service, it eliminates much or all of the expense caused by competition. The weakness of the coöperative concern generally lies in scant capital, lack of a well digested plan of operations, understood by the members, and a disposition to distribute profits, rather than use them in extending the enterprise. For efficiency a corporation must have the requisite capital, no matter what may be the principles of its organization.

The next consideration is the justice of the system. It is in this particular that the great capitalistic corporations are most open to criticism. The attacks so commonly made against them because of their vast properties, incomes, and power, and their tendencies to grow, combine and consolidate,

would be groundless, if all these elements of strength were justly used. The fundamental objection to the ordinary capitalistic corporation is, that its sole purpose is financial gain, and that in business it has a code of ethics corresponding to that of the king, who uses his army to extend his dominions. Among the many unjust and immoral operations connected with these organizations may be noted the manipulation of and gambling in their stocks. The vast fortunes thus acquired are not products of earnings, carefully saved and applied to the development of new enterprises. The moral tone of the management of great corporations is low in the particular that its officials and agents are often required to seize every advantage and yield nothing except where the company is legally bound. Officials are not always authorized to deal justly and fairly with the public, but are sometimes bound by rigid rules to yield no advantage gained. Doubtful claims against the company are rejected and meritorious ones of certain classes habitually scaled down under threat of litigation. In the conduct of their business, such of the great corporations as enjoy monopolies, like the railroad corporations and other public service companies, and the great manufacturing and commercial corporations which have achieved a monopoly of some line of business, may and often do, fix prices and charges at such rate as, in their judgment, will yield the largest net return, without regard to the rights of the public.

The injustice wrought by corporations lies in the taking or withholding from one or many of that which is justly their due and conferring it on one or more others to whom it is not due. There are two principal classes of recipients of the revenues of a corporation, the employees, high and low, and the stockholders. Probably the most glaring abuses in the payment of salaries are connected with the great life insurance companies, which have no watchful stockholders to change directors and compel a reduction of salaries. The abuses connected with some of these corporations are very gross, the only practical limit seeming to be the greed of the managers themselves. Some of the great railway corporations pay a

few quite high salaries, but the general rule with reference to the salaries of the officers of corporations is that they are not grossly excessive. The other employees usually earn all or more than they get. The bulk of the excessive gains goes to the stockholders. While efforts are constantly made to correct the evils and injustices mentioned by legislation, another method is being evolved which may in time accomplish the result. This is merely the organization of corporations to do the business now transacted by the objectionable ones, but on just principles. The rules governing the operations of a corporation are made by its directors and stockholders and become its laws. If these are just to all concerned the desired end is accomplished. The fraternal orders have come very near solving the problem so far as insurance is concerned. They lack however the economy and strength that would come from a single organization without competition and under no necessity to solicit business. The chief expense of all insurance companies is connected with getting the business. The ideal organization would be one resorted to by all insurers, which paid all honest losses promptly and collected from policyholders only enough to enable it to do so and to pay reasonable wages to all its necessary officers and clerks.

The Rochdale store system is designed to eliminate merchant's profits by distributing among the stockholders the net profits, above a fixed moderate percentage on the capital stock and the expenses of transacting the business, on the basis of the amount of goods purchased rather than the amount of stock held. Sometimes a part of these profits is given to the employees. The usefulness of these organizations depends on integrity and ability in management and the combination of a sufficient number of patrons of the stores to make economical management practicable and leave a margin of savings. Very small concerns can rarely succeed. The same principle is now being applied in selling agencies. The producers of many articles of commerce find it to their interest to combine and sell their products in the general market through a common agency, instead of selling to dealers, thereby saving the profits and distributing them among the

stockholders who sell their products to the corporation, on the same principle as the Rochdale stores distribute them among buyers. Though some of these coöperative concerns have assumed large proportions, as a rule they are engaged in lines of business requiring only a small capital. Little or no success has as yet attended the construction of railroads or other public service plants, requiring large capital, on a coöperative basis. In cities the public municipal corporations successfully take on the added functions of supplying the municipality with water, light, heat, power, street transportation and the like, in which all the citizens are interested and require similar service. The principle on which these public utilities are conducted by the municipalities is that of coöperation. The service is rendered at cost, interest being usually paid on a bonded debt covering the cost of the property.

The problem as affecting railroads, telegraphs and telephones has been solved in Europe, New Zealand and elsewhere by governmental ownership, thus extending the coöperative principle to the conduct of these lines of business by the highest corporation, the state. The International Postal Union has gone yet one great stride farther and is the pioneer world wide coöperative combination, which transmits the mails from any part of the civilized world to any other part of it, with the maximum of efficiency and the minimum of cost. No other business agency in the United States compares in efficiency with the Post Office. This is a purely coöperative enterprise, conducted in the interest of the whole people by the national government and is the most useful and important function it performs. The great telegraph company operated by a purely capitalistic corporation with capitalistic methods over substantially the same territory within the United States and also reaching into other countries, gives very poor service at very high rates and stands in strong contrast with the Post Office both as to efficiency and economy.

The true position of the corporation is that of a pioneer in the work of organizing the world on a firm basis of peace.

Unlike the military organizations of feudal times, which performed no beneficial function for the common good, the corporations, almost without exception, conduct some useful business. They combine capital and labor in trade, transportation, manufacturing, mining, fishing or other peaceful productive enterprise. Great latitude is allowed in all the American states in the purposes for which corporations may be formed. The incorporators are allowed to fix the amount of their capital stock, the size of the shares, the duration of the corporation, to give it a name and specify the objects it intends to accomplish, which many states allow by statute to be any lawful one. This permits anyone to take the initiative and form an organization to do anything useful, with whatever strength of combination he is able to draw together. Success in the enterprise requires not merely the requisite capital and working force, but the education of all who are connected with it in its principles and methods, so that each may know his duty to the corporation and its members and to the public. Failure comes from many causes, inadequate capital, incompetent management and dishonesty, but most frequently of all from want of a perfect understanding as to the end to be accomplished, and how it is to be done. Ill-digested schemes, not quite clear in the minds of the promoters, or well digested ones not fully comprehended by those relied on to carry them through, are generally doomed to failure from the start.

No other topic fills so wide a field in the law or is of such growing importance as that of corporations. In no other way is the genius for directing the combined efforts of numbers of people so fully manifested as in their organization and operations. They afford object lessons of deep moral depravity and of the most exalted altruism, of heartless greed and cruelty and of that charity and helpfulness which is the outward expression of love for the unfortunate. They should be approved or condemned according to their deserts, and fostered or destroyed according to their helpful or harmful effects. Viewed as a whole they fairly gauge the moral standards and efficiency of the business world, and point the way to higher and still higher social development.

National and State Laws

The system of laws, which prevails throughout the United States, has for its foundation the common law of England and the ancient statutes of that country. It is a very common error to assume that the original purpose of all laws was to compel all to be just. Many laws in all countries are designed to promote injustice. This is true of the land laws of England. The leading purpose of the law-makers, since the free Saxon common tenure of land was changed into the feudal system, has been to give unmerited advantages to the king and his courtiers, in early times, and to the favored few in modern, through a legal theory of land ownership. All the monstrous injustice of the feudal tenures was based on strict law, which gave to the lord the soil and through his title to it arbitrary power over all the dwellers on it. There are some survivals of ancient Saxon ideas in the commons and highways of the country, but the leading idea of exclusive ownership of the soil, without reference to use or occupancy, is the feudal idea modernized. Under the feudal system the lord exacted services from his tenants, but was himself bound to protect the tenants in their possessions. Under the modern American system of absolute paper titles, one may acquire the title to an unlimited area of land, without being under any obligation to allow any of the tenants on it to remain, and with no limitation whatever on the terms he may impose on those he may take as his tenants. He cannot be forced to sell or rent any part of it, except for public use for those purposes recognized as warranting the exercise of the right of eminent domain. In the early history of the country there was an extensive development along lines somewhat similar to the ancient tenure in common. The government of the United States acquired vast districts of country, subject only to the claims of the native Indian tribes, which were held as public property. Some of the states, notably Texas, have had great areas of public lands. In the early days of sparse population sales in large tracts were allowed, but the policy of the federal government has been to restrict the amount any individual may acquire to a moderate sized farm, to be

occupied and tilled by the owner. The homestead law restricts the quantity to 160 acres and requires five years' residence and cultivation before a patent issues. This system worked beneficially so long as there remained an abundance of fertile country unoccupied. But the limit has already been reached and desirable homes on the public domain are now hard to find. Mountains and deserts abound, but the great fertile prairies have all become private property. The nation is no longer able to give to each of its citizens land for a home, and the process of differentiating classes of landlords and tenants is proceeding rapidly. The eleventh census shows that in the new western states and territories the percentage of home owners is largest, and that it is smallest in the southern states having the largest percentage of colored people. This census shows that of the whole 12,690,152 families in the United States, only 47.8 per cent owned the homes they occupied, and 52.2 per cent were tenants. In 1910 the percentage of home owners had fallen to 46.5. The extreme range was exhibited in Oklahoma with only 13.11 per cent of tenants and South Carolina with 71.23 per cent. As might naturally be expected, the showing in the great cities is still more discouraging. In the twenty-eight leading cities having a population of 100,000 or more, there were 1,948,834 families of which 444,879 owned the homes they occupied and 1,503,955 or 77.17 per cent lived in rented houses. In the great city of New York, out of a total of 312,754 families, only 19,798 or 6.33 per cent owned the homes they lived in. These figures are a little more unfavorable throughout than the facts, because many people own homes, but rent them and live elsewhere in rented houses. Widows, bachelors and maiden ladies often rent their property and live with a tenant family. New York but illustrates the tendency everywhere manifest for the land to pass into few hands, wherever the law assures ownership to the holder of a paper title and his heirs without regard to occupancy. The most significant facts connected with this subject are, that there is a steady drift of population into the cities, that in the cities the land falls under the dominion of a diminishing percentage

of owners, and that the laws favor and effectuate this tendency.

Some wealthy families in each of the older great cities have for several generations steadily pursued the policy of buying land and never selling. Where the income exceeds the expenses, as the law stands, there is nothing to prevent a great land owner from steadily extending his holdings and thereby diminishing the area accessible to others seeking to own homes. The important point now under consideration is that this results from artificial human law, and not from the law of nature. In all primitive societies use and occupancy are the only titles recognized. Where the land is ample and the people are few, each man is allowed to occupy what he pleases and when he abandons it anyone else may take it. As population increases the tribe parcels out the land, giving to each his share, but the ownership is in the whole and the ancient Saxons divided it among the working units. We are not now considering the expediency of paper titles, but seek to emphasize the point that the system is wholly artificial, and that the division of the people into landlords and tenants is entirely due to the law. Whatever of injustice there is in it is chargeable to the law. The law gives the landlord absolute dominion over his lands and tenements, except as he voluntarily parts with it, and subject to the taxes and burdens imposed by public authority.

To those who have given no study to the laws it might occasion great surprise to find how little of the law administered by the courts is based on Congressional or Legislative enactment. It is also remarkable that of the great mass of public acts of the law-making bodies, published as the work done at each session, so little is of permanent force and so much is either temporary in character or mere revision or alteration of what preceded it. The compilation of the General Statutes of the United States published in 1875 contains seventy-four titles, of which one regulates the election of senators and representatives, the organization of the houses, compensation of members, officers and employees, the library, congressional investigations and contested elections, another regulates presidential elections and president's salary. Then

follow nine titles devoted to the organization and conduct of the executive departments, State, War, Treasury, Justice, Post Office, Navy, Interior and Agriculture. Title 13 establishes the District and Circuit Courts and fixes the jurisdiction, organization and procedure of all the federal courts. After these are titles dealing with the Army, the Navy, the Militia, Arsenal and Arms, Diplomatic and Consular Officers. Title 23 treats of the organization of the Territories and the four following of Civil Rights, Citizenship, the Elective Franchise and Freedmen. Title 28 declares the policy of the government toward the Indians and makes provisions to carry it into execution. After this come titles on Immigration, Naturalization, The Census, Public Lands, Duties on Imports, Collection of Duties, Internal Revenue, Coinage, Weights and Measures, Currency, Legal Tender, Public Moneys, Appropriations, Public Debt, Postal Service, Foreign Relations, Commerce and Navigation, Fisheries, Steam Vessels, Merchant Seamen, Prizes, Lights and Buoys, Coast Survey, Pensions, Public Health, National Hospitals, Asylums and Cemeteries, Patents, Trade Marks and Copyrights, Bankruptcy, National Banks, Rivers and Harbors, Railways, Telegraphs, Crimes against the United States, and some minor matters. All this is printed in a single volume of 1092 pages, exclusive of index. By far the greater space is devoted to the organization of the departments and working forces of the government, the army and navy, the public revenue and matters growing out of the civil war. There is very little that affects the daily life of the citizen, except the Post Office.

Though the people of the United States are educated away from the forms of unjust government, which military power has so often established, they are not yet fully awake to the barbarity, the criminality and utter unjustifiability of aggressive warfare, or of war to gratify the pride, often wrongly called the dignity, of a nation. In the early days of the Republic private warfare was popular. In the North and East an insult must be resented by a blow with the fist, in the South and West by a challenge to fight a duel. The so-called

code of honor required a challenge to be given under certain conditions, to refuse which meant social disgrace. Friends must be called in to witness the fight and the purpose was to kill. This survival of barbarism has now fallen into disfavor and many of the states, in which such combats were most frequent, have adopted constitutional prohibition of it.

In sifting the provisions of all the statutes of the United States, for the purpose of finding such as make provisions beneficial to the people, we find provisions with reference to the public lands, coinage, weights and measures, the currency, commerce and navigation, lights and buoys, hospitals, asylums, and river and harbors are necessary and useful. Most of the rest relate to the construction of the great governmental machine and the manner of compelling the people to support it. Since the acquisition of the Philippine Islands the military feature has grown rapidly and the policy of constructing war ships, very expensive and utterly without use in times of peace, has been adopted, and many millions are annually expended on them. From \$48,950,268 for war and \$34,561,546 for the navy in 1897, the appropriations increased and in 1911 were \$160,135,976 for war and \$119,937,644, for the navy. A great navy of this kind will never be of any use except in war, and its possession will be an ever present temptation to statesmen to plunge the country into foreign wars on slight provocation. The only sure bond of peace between nations, as well as between individuals, is confidence in each other's intentions and mutual good will. Great armies and navies always prevent this confidence. It is fairly certain that the United States, if always disposed to deal justly with others, could safely rely on peaceful influences to secure the rights of its citizens the world over, to substantially the same extent that they are now secured. Wrongs will doubtless continue to be done in the future as in the past, but the greatest of all wrongs with which the world has been cursed throughout all time are the cruel wars in which the innocent expiate the crimes of their guilty rulers and leaders.

The ground covered by the statutes of the States is quite

different from that of the National legislation. It reaches the daily life of the people at far more points. The statutes of each state regulate the machinery of the state government and also that of the counties, towns, cities and school districts. They determine and establish the qualifications of voters, the manner of exercising the elective franchise, the educational system from the district school to the university, the organization of the various courts, their jurisdiction and procedure, the charitable and penal institutions, the establishment, improvement and repairing of highways and bridges, the descent and distribution of property, the administration of estates, the organization of corporations, their powers, duties and liabilities, the criminal code defining all public offenses and fixing their punishments, the rules governing the guardianship of minors and care of their estates, marriage, divorce, the conveyance and mortgaging of land and recording the deeds and other instruments affecting the title to it, taxation, partnerships, assignments for the benefit of creditors, interest, contracts, fences, landlords and tenants, liens on real and personal property, lunatics, imbeciles and drunkards, domestic animals, trusts and powers. Matters of local concern peculiar to the state are also covered. Of all the functions of the state government that of educating the young is far the most important. Of all the good things passed down from generation to generation, the accumulated knowledge is the most valuable. Part of this is passed down outside the schools, in the homes, on the farms, in the workshops, factories, mines, counting-houses and all the places where useful things are done. Instruction in useful employments is mostly given outside the schools, though there is a marked increase of late in the attention given in the schools to domestic science, agriculture and mechanical arts. The practical instruction in domestic arts and in some particular business, which the child receives at home and in connection with such business is of the greatest practical value, but the schools open a wider field to those disposed to inquire and introduce the student to some knowledge of the outside world which he cannot see, to the past and the distant. Narrow

prejudices tending to enmity between individuals and nations are mainly due to lack of knowledge of each other. The bonds that bind the people of the United States in concord are the bonds of interest and sympathy, which are steadily strengthened by the diffusion of general information. The public schools where the young are taught to read and write, lay the foundation for the great educational work of the newspapers, periodicals and correspondence distributed through the post office, and for the use of books and libraries, which constitute the more permanent treasure houses of knowledge. While the general government has assigned to the new states a portion of the public domain to be used for the support of the public schools, the great burden of public instruction is borne by the people under state regulations. The actual direction of school affairs is mainly given by the people themselves, who voluntarily contribute generously for the free instruction of all pupils. In many states all the public schools from primary to university give free instruction to all children of the state. While there is ample room for improvement in the school system, both as to its general theories and methods of instruction, modern civilization finds its highest and best practical expression through the educational institutions. All progress necessarily comes from the preservation and dissemination of the truths gathered from past experience, supplemented by the few newly discovered ones.

There are some statutes to be found in nearly or quite all the states, copied or modelled after old English statutes, which are believed to be dictated by public policy, though not founded on any principle of natural justice. What is known as the statute of Frauds and Perjuries requires certain classes of contracts to be in writing and denies relief in the courts on parol contracts of these classes, notably contracts for the sale of lands, trusts relating to lands, contracts to pay the debt of another, those based on the consideration of marriage, and such as are not to be performed within a given period of time. The statute of limitations denies relief in the courts unless suit be brought within the time limited by

the statute for the particular class of actions to which the cause belongs. The theory on which these statutes were passed is, that dishonest persons would claim rights under parol contracts of the classes named and support their claims by perjury, and therefore written evidence should be required, and that stale demands are liable to be presented and falsely urged after the evidence to defeat them has been lost. Both these statutes confessedly work injustice by denying relief on just claims under the arbitrary rules they impose. They assume the prevalence of dishonesty among the people to such an extent that more wrong would result by reason thereof, if suits were allowed to be maintained, than by denial of all remedy in the courts. This view may be altogether erroneous, but the consensus of legislative judgment is such as to continue these arbitrary rules with considerable variation, however, in the different states, especially in the times allowed for bringing suits.

While the state statutes generally require some public celebration of marriages and many states require marriage licenses to be taken out, compliance with these requirements is not generally held to be absolutely essential to a valid marriage. The only communities where plurality of wives has been allowed are the Mormon settlements. Public sentiment throughout the whole country has, however, been so strong against polygamy, that severe statutes have been passed to extirpate it, and it is not now countenanced by the laws of any state or territory. Everywhere the free consent of the parties to the marriage is regarded as the only real concern of the state. After marriage, in most states, the wife has a status amounting nearly or quite to legal equality with her husband. The old English rule, which merged the legal existence of the wife in that of the husband, has been done away with and the wife may in most states own property in her own name, contract debts, buy, sell and carry on business with nearly or quite the same freedom as a married man.

The greatest diversity of state laws is on the subject of divorce. At one extreme South Carolina by the constitution of 1895 establishes the rule "Divorces from the bonds of

matrimony shall not be allowed in this state." Other states like New York allow absolute divorces for adultery only, but the courts are authorized to annul certain unlawful or void marriages. At the other extreme are Kansas and some of the other western states, which authorize the courts to grant absolute divorces, for abandonment for one year, adultery, impotency, pregnancy of wife at marriage by one other than her husband, extreme cruelty, fraudulent contract, habitual drunkenness, gross neglect of duty, conviction of a felony or having another husband or wife living at the time of marriage. Between these extremes there is much diversity in the statutes of the different states.

The statutes relating to the organization and management of corporations also exhibit great diversity. In some states a corporation may be formed to carry on any lawful business or promote any legitimate object, as in Delaware, and the only formalities required are filing a charter with the Secretary of State setting forth certain matters specified in the law and payment of certain fees. Other states prescribe the purposes for which corporations may be formed with much particularity and require application to be made to some court, board or officer authorized to pass on the right to incorporate for the purpose desired.

Statutes in each of the states regulate the descent and distribution of the property of deceased persons. All are framed on the theory that the owner may dispose of it by will, and that in the absence of a will the whole shall be distributed to those related to the deceased owner by blood or marriage. The leading difference in the division made is in the share allowed to the surviving widow or husband, thus in some of the older states like Massachusetts, New York and New Jersey the wife is given the old common law estate of dower, *i.e.*, a life estate in one-third the deceased husband's lands, and the husband takes a life estate in all the deceased wife's lands as tenant by courtesy, if there has been issue of the marriage born alive. In Colorado, if there are children, the surviving husband or wife takes half the estate, if no children the whole. In other states there are provisions intermediate

between these, some of them varying the rule according to the number of children and others, where there are no children, giving the wife the whole only of small estates and distributing a portion of large estates among the relatives of the husband. In Mississippi the widow takes a child's part.

In the distribution of the estate among children and their descendants, after the share of the husband or wife has been set apart, there is entire uniformity throughout all the states. The children take equally and the heirs of deceased children take by representation. There is no preference given in any state on account of age or sex. There is more diversity in the distribution among collaterals, which it would serve no present purpose to follow. In no state is there any survival either of primogeniture or the ancient inheritance by the whole community. Recently some of the states have imposed a tax on large estates, but the idea of state inheritance has not received any legislative consideration so far as the writer is aware. In many states the homestead is secured against sale for debts and division among the heirs until the youngest child becomes of age. The mode of conveying lands is regulated by statute and is substantially uniform throughout all the states. A deed signed by the grantor is required. In order that the deed may be recorded, it must be acknowledged before some one of the officers named in the statute and his certificate of the fact attached to the deed. In order to impart notice of the transfer of the title, the deed must be recorded in a public office, usually termed that of the Register or Recorder of Deeds. There is a difference in some states between a conveyance of the homestead and of other real estate, the joint consent of husband and wife being required. Their separate deeds have been held in some cases absolutely void. There is also much diversity in the different states as to the effect of a conveyance by the husband alone on the wife's inheritable interest in his lands. In some states the husband may convey a full title to all but the homestead by his separate deed, while in others the wife's dower or other inheritable interest in his estate remains, unless she joins in the conveyance. In Louisiana, Texas, New

Mexico, Arizona, California, Nevada, Idaho and Washington a distinction, borrowed from the Spanish law, is made between property owned prior to the marriage and that accumulated afterward, the latter being termed community property and regarded as jointly owned by both. This joint ownership does not in Louisiana prevent the husband alone from conveying it. At the death of one the survivor takes only the half, subject to the payment of debts, and the balance goes to the heirs. There is much diversity in the laws of the different states with reference to what property may be seized for the payment of debts. All exempt some personal property, but there is much difference in the amount. The general idea is to leave to the debtor and his family those things which are indispensable to their comfortable existence. In many states this exemption includes books, pictures and musical instruments without limit as to value, and even the identical articles for which the debt was contracted. With reference to the exemption of land there is even greater diversity, none being allowed in Rhode Island or Delaware. In Pennsylvania \$300 in value of real or personal property, selected by the debtor, and all wearing apparel, bibles and school books are exempt. In most of the eastern states, by compliance with certain statutory provisions, a homestead of limited value may be secured; in Maine the limit is \$500, in New York and New Jersey, \$1,000, in Virginia \$2,000, while in Kansas an acre of ground in a city or one hundred and sixty acres of farming land, occupied as a residence by the family of the debtor, with all the improvements thereon without regard to value, is absolutely exempt, and in Texas a town homestead worth \$5,000 or a farm of two hundred acres is allowed. The wages of the debtor, where necessary for the support of his family, are also usually exempt for a limited period. This stands in marked contrast with the brutal system which prevailed at the time of the revolution, under which the family could be stripped to utter destitution and the debtor thrown into prison, to be confined at the pleasure of the creditor till some friend paid the debt. The extremely liberal exemptions allowed in states like Kansas

are often taken advantage of by dishonest men. So long as the state continues to exercise the function of a collecting agent and enforces the payment of debts, it is manifestly inequitable to seize the little stock of a poor groceryman for his debts, and at the same time allow the occupant of a palatial mansion or a farm of great value to hold a fortune, exempt from the payment of a debt to this same groceryman for necessities bought from his store. There should be some reasonable approach toward equality in such laws, as is the case in many states.

In the construction of the judicial systems of the various states and in the procedure in the courts, while there are many common features there is also much diversity of detail, due in part to divergent views of expediency. At the head in all the states there is a court of appeals with authority to reverse the judgments of inferior courts for error of law. These courts are usually styled the Supreme Court. There is held in each county one or more courts of general original jurisdiction, called either the district or circuit court in most states. Between these there are sometimes intermediate courts with jurisdiction to review certain classes of decisions. Sometimes an appeal is allowed successively from the intermediate to the supreme court. At the base of the judicial system are the justices of the peace, usually township, but sometimes county officers. Probate jurisdiction and supervision of the estates of deceased persons, minors, and others under legal disability are generally vested in a Probate Court called Orphan's Court in some states and Surrogate's in others but in some of the states the circuit courts exercise this jurisdiction. The codes of practice are statutory modifications of the old English system and while, in what are termed the code states, distinctions between actions at law and in equity and all forms of action are in terms abolished, many of the old distinctions are still retained. The idea of the framers of the codes was to simplify the system and avoid the failures of justice, which occurred so frequently because of the strict rules of procedure and pleading. It must be confessed, however, that there is very much yet to be desired

in the way of reforms in the methods of courts. In the great care which has been taken to secure strict observance of positive laws, a system has been built up which affords the average citizen little chance to get speedy justice. Though in most states the principles formerly applied by courts both of law and of equity are now applied by the same tribunal in one case, they are applied in a different way. Suits, which under the English system were required to be brought in the law courts, entitle the party to a trial by a jury. In actual practice the verdict of a jury, except where it acquits a defendant of a criminal charge, does not finally decide anything. On a motion for a new trial the court may set it aside. From this decision an appeal may be taken to a reviewing court and sometimes again to a higher court, where the decision of the trial court may be reversed. If a question of Federal law is involved, an appeal lies still to the Supreme Court of the United States from the decision of the highest court of the state having cognizance of the cause. If the decisions of the courts of last resort were final it would not be so bad, but the case may be merely reversed for error in the instructions given to the jury by the trial court or for other erroneous ruling of the court, such as the improper admission or rejection of evidence, and sent back for a new trial. There is never any assurance that the trial court will not commit an error on some other point at the next trial, and the case again go the rounds of appeal, reversal and new trial. This is of frequent occurrence and suitors are often worn out in an effort to reach a final determination of the cause, which can only be when the highest reviewing court agrees with the trial judge on all vital questions of law passed on by him. Such a system lacks little of utter absurdity. The difficulty is hinged on the sacred right of trial by jury, which is thus rendered in fact valueless. The reviewing court will not itself decide what the facts are, but will often say that the findings of the jury are not in accordance with the evidence. These delays and successive trials give an unconscionable advantage to the rich suitor or the strong corporation, able to pay the expenses of the litigation and go from court to court,

while the poor man with a good case may be compelled either to accept the first adverse decision or give a lawyer a large part of his claim to prosecute the case farther on a contingent fee. Under such a system substantial justice is lost sight of, and the business of the lawyer becomes a mere exercise of technical skill in taking unwarranted advantages allowed by the rules of procedure. It may well be doubted whether, on the whole, justice is promoted by reviewing courts. At times it has happened in most of the states that the court dockets have become overburdened to such an extent that a case could not be reached for many years. Speedy decision is of almost as much importance as right decision. Long delay is a substantial denial of justice.

Although the codes in terms require brevity and simplicity in pleadings there is in the system actually followed and required by the courts much useless prolixity and technicality. The new English system is very greatly in advance of anything followed in any of the United States, except perhaps that under the Kansas Code of 1909. The new Equity Rules promulgated by the Supreme Court of the United States greatly simplify and improve the practice in United States courts in equity cases.

The bulk of the compiled general statutes of the various states varies from one to three large volumes. Taking those of Kansas, a state of medium size, we find the compilation divided into 119 chapters of which thirty-four are devoted to the state institutions, officers, agencies, revenues, and expenditures, eleven to courts and their procedure, four to schools, two to criminal law and practice, two to suffrage and elections, two to cities, two to corporations and the remaining sixty-two to miscellaneous matters, some of very slight importance.

For most of the general principles of the law administered by the courts we must look to the great libraries containing the works of text writers and the reported decisions of the courts of the United States, the several states, England and its dependencies. Numerous digests and Encyclopedias have been made and become deficient and out of date as soon as

the last volume was published. Reports of decided cases are being published in each state at such a rate as to make a considerable library from the issues of a single year. The work of classification of the various topics of the law is done according to the view of the writer or compiler, and new topics are being added from time to time.

While much of the law administered by the courts and commented on in the written opinions published in the reports is more or less connected with some statute, the full exposition of the law on any subject is never to be found in any statute, but must be searched out through numerous volumes. Even the classification of the various topics of the law is a matter on which the various authors have widely divergent views, and much of the conflict in the decisions arises from the different views of judges as to the class in which a given action falls and the particular principle which should control, rather than any disagreement as to what the principles of the law are. In comparing different views respecting legal classification we find that in the American and English Encyclopedia of Law, in which the titles are arranged alphabetically and only what is termed substantive law is included, there are sixty-one titles beginning with the letter A. In the companion work published by the same company, the Encyclopedia of Pleading and Practice, there are forty-two titles beginning with A, while the American Digest, Century Edition, which is considerably more full and bulky and includes both substantive law and pleading and practice, has but forty-five titles beginning with A. Besides these various titles, which cover some topic of law, there are numerous cross references and brief paragraphs giving definitions of words. The system followed is to give a general statement of the law in the text and in very elaborate footnotes to give references to the authorities in support of it. The list of abbreviations used and titles of the works to which they refer covers sixty-four large pages of fine type. The twenty-two volumes of the Encyclopedia of Pleading and Practice contain five hundred and sixteen titles. The wide divergence between the classifications of the Encyclopedias

and the Digest is due to the fact that in the Digest the titles are far more comprehensive and further classifications are made by sub-headings, for instance in the Encyclopedia of Law the title Agency fills three hundred pages and is by odds the most important in Vol. I, while in the Digest there is nothing under the heading Agency but a cross reference to the title Principal and Agent. On the other hand the Digest, which divides its large closely printed pages into two columns, fills 4951 columns under the title Appeal and Error, while the Encyclopedia of Law has no such title, and the Encyclopedia of Pleading and Practice gives 587 pages to Appeals, 335 to Certiorari and ninety-five to Writ of Error. The system followed in England and America of developing the principles of the law by the written opinions of the judges, given in actual controversies decided by them and confined to the very questions in issue, has been much extolled, mainly on the ground that great care is necessarily exercised in the performance of the duty of determining the rights of the parties before the court. It stands in sharp contrast with that by which the Roman civil law was developed, which was largely by what were termed rescripts, answering abstract questions as to the rule in a given case. It may as well be confessed now as later that our system is already overgrown, and the multiplication of decisions and books, instead of settling and making clear the doubtful matters in the law, year by year introduces confusion and uncertainty. There is a widely prevalent disposition among the judges to refine and introduce exceptions, till what were once fairly clear rules of easy application have ceased to be rules and in their stead the individual view of the judge, whatever it may be, can be backed with an authority from some court or other, which at least seems to support it. There is now an ever widening field of uncertainty as to what the rule is in certain classes of cases. This works to the advantage of the strong suitor, who can appeal from court to court, and the most unfortunate part of the matter is that this field of uncertainty is in that district which affects the interests of the great combinations of capital and privilege.

Corporations and their rights, powers, duties and obligations, are now by far the most prolific subjects of litigation, and under various headings fill more than 3200 pages of the American and English Encyclopedia of Law. The main reason for this is that it is through corporations that most modern business combinations are formed and new enterprises are undertaken. The field covered by them is constantly widening and includes both new purposes and new methods of accomplishing them. The laws of inheritance and the distribution of the estates of deceased persons through the courts occupy the next largest space. Frauds and fraudulent conveyances of property, bills of exchange and promissory notes, elections, landlord and tenant, homesteads and exemptions and marriage and divorce are the next most prominent topics. It is gratifying to find that criminal law has become of minor importance, and that murder and homicide, the most prominent title of the criminal law, fills far less space in the books than either of those above named.

Military law is a subject of such slight importance as to require but little notice, and religious societies are no longer prominent litigants. There is no more certain gauge of the moral height of any society than that of the purity and strength of family ties. Yet we find that while there is a full consensus of opinion among thoughtful people on this proposition, there is a wide divergence on the question of divorce. All agree that husband and wife should be faithful and dutiful, but if not what then? There are two opposing theories of expediency, one that they should be held legally bound to each other and forced to make the best of a distasteful relation, the other that when the matrimonial bond has become intolerable to one, it should be dissolved by a court's decree and the parties again made free to contract new alliances. Perhaps the most radical defect in the laws of those states which grant divorces with the greatest liberality is in failing to give full weight to the claims of the offspring of the union. Children have natural claims on both parents and are most deeply interested in the question of divorce and the breaking up of the family. Except in rare instances they

are not chargeable with the wrong doings of their parents, but rather sufferers therefrom. A suit for divorce ought not to be viewed in the light merely of a controversy between husband and wife, but rather of a proceeding to disrupt the family, in which the children, being innocent parties, are entitled to have their interests protected before a divorce is granted. It is rarely the case that the applicant for divorce is wholly free from fault. Estrangements usually result from some wrong on both sides and the safer standpoint for judicial action is that of the general interest of the children, to whom the public owe a clear duty of protection. This view is now taken by the laws of some states.

The rules governing the relation of parent and child are few and simple yet are still tinctured with some remnants of brutality. The parent, if too passionate or stupid to govern his child by reason, may beat him, and only in case of extreme cruelty will the law interfere. The father may take the earnings of his minor child and is liable for his support. It is easily apparent that domestic happiness is not dependent to any marked degree on the legal rules applicable to the relations of members of the family. The interference of courts in domestic concerns seldom promotes concord or happiness. The promptings of love, the mutual interests, the wholesome teachings of the elders, and all the pure and refining influences that nature breeds in the home of a well mated couple, are vastly more potent and thorough in regulating the domestic relations, than statutes or court judgments can possibly be. It is only the exceptional household that is in any manner affected by the rules of law administered in the courts.

The old common law idea of the domination of the husband has been discarded, and the tendency in the United States has been steady and constant in the direction of absolute equality of rights for wives. Children also have come to be looked upon as more nearly independent and entitled to such measure of freedom as they are mentally and physically capable of, and parents are expected to instruct and reason with rather than beat them.

The rules governing land tenure and the inheritance of

property, though so familiar in their main features as to be generally accepted as natural laws, are purely artificial and arbitrary. Absolute ownership of the soil is entirely a creation of the law maker, impossible of practical operation to the extent the law warrants, namely, an absolute title in a living being to the land for all future time. There is a manifest absurdity in conferring on a mortal man, limited to a brief term of life, dominion over that which will remain substantially unchanged for countless centuries to come. Nature clearly and definitely limits the dominion of man, even over his own body, to the term of his natural life, and all control exercised by him over material things after his death must necessarily be through an artificial extension of his will through the operation of a positive law. All ownership of land without actual occupancy is purely artificial. In the early settlement of new districts nature indicates simple rules by which the rights of each comer are determined. He may take possession of so much as he can use, and the next settler must choose out of the remaining lands. Actual possession and use establish the right. As numbers increase and there is no longer enough land to satisfy all comers, some limitations are of necessity imposed on the claims of occupants and it becomes necessary to make land laws. Of these the world presents a great variety. In the United States there is at present no limit whatever to the quantity one person may acquire. Land is treated as a merchantable commodity, to be bought and sold without restrictions other than as to form. The laws governing the conveyance of land, the making and recording of deeds, leases, mortgages and other written instruments affecting the title, are all human inventions, based on conceptions of expediency.

The laws of inheritance are also mere legislative creations. Nature indicates that when the occupant of a house dies his family should still continue in possession of it, and also that the household goods and furniture and the domestic animals in his possession should continue in the possession of the family, but nature fixes no law for their division among heirs. Houses and lands in the possession of others as ten-

ants of the deceased owner, if there were no legal rules of inheritance, would remain in the possession of the actual holders, freed from the claim of the landlord after he ceased to breathe. The rules which pass the landlord's title to others are arbitrary and artificial. To avoid conflict and confusion it is necessary that some rules should be established. In the various countries of the earth a great variety of rules exists, ranging from public inheritance to primogeniture, from making the estate merely an addition to the common property of the community to giving all the land to the oldest son. The principle of passing dominion over a large estate from father to son is identical with that of the inheritance of political power. In the case of great properties the public has an interest in their use and management. The son of a wise, able and just king may be like his father, but is almost as often stupid, incompetent and dishonest. Blood furnishes no sure guarantee of capacity, especially as but half comes from the father, and the heir may exhibit the qualities of some remote ancestor on either side, rather than those of his father. In the inheritance of property the rule is that the son of a hard, grasping, avaricious father is inclined to be idle and dissolute. A very large percentage of the smaller fortunes accumulated by one generation are dissipated by the next. This is detrimental to the public interests, for the heir as a rule is less industrious, more wasteful and often more dissolute than he would have been if started in life knowing that he must provide for himself. As the laws of inheritance are purely of legislative creation, others framed on radically different principles may be made at any time the people become convinced either of their justice or expediency. Law-makers seem to have considered the question of right as a limited one, affecting only those nearly related to the deceased owner by blood or affinity. Manifestly the question is far wider. In the case of the multi-millionaire, on whose properties thousands of laborers are employed and yet more thousands are dependent for their prosperity, the question as to proper management of the property is of public concern. It is of great importance whether the rich man's

son shall become the hereditary ruler of all the tenants and laborers on his estate and their offspring, and whether the accident of birth shall confer through a legal theory of title dominion over many people. It is a question of prime public importance whether laws of inheritance be established, which shall deal justly with all citizens and give each a substantially equal share of the earth and the accumulations of past generations. Shall rich ruling families be differentiated in America, as they have been in Europe, to ultimately take political power as well as title to the land, or shall the principles of our system of inheritance be changed with a view to the preservation of substantial equality among the citizens at the start, leaving great wealth to be gained only by meritorious effort. Is not wealth by inheritance a survival of chaotic times when might made right? Has it any support in morals or expediency? The state is partial in its treatment of its citizens when its laws assign to one child a vast fortune and to another nothing, for it is the law alone that gives effect to the will of a dead man, or assigns his estate to a particular person or heir when he leaves no will.

In the books the title of master and servant is still retained as expressive of the relation of employer and employee. At the time of the revolution the law in most of the colonies recognized the title of a master to African slaves. The civil war terminated slavery. Since then the theory everywhere has been that personal service is purely a matter of voluntary contract, except where imposed as a punishment by the public for a violation of some penal statute. The master has full liberty to hire such servants as he desires, and the servant may choose his employer and refuse to work except at such wages as he is willing to accept. In times when all industries are active there is little difficulty in finding employment and the freedom is real, except as affected by local conditions and the organizations of capital and labor. In periods of depression, however, large numbers of laborers are discharged and can find no new employer. The least efficient of the employees are first turned away and, as industrial activities diminish, the ranks of the unemployed swell until

the idlers roam over the country as beggars in great numbers. Employers in nearly all lines of manufacturing, as well as transportation, are year by year forming larger and stronger combinations. The effort on their part is to accomplish results with the least expenditure of money for labor. The general public is the gainer by all legitimate economies in the conduct of any line of business, provided it be effectually subjected to the law of competition, but a favorite means of gaining unearned wealth has long been to combine all competitors or destroy part of them, and, having gained a monopoly, extort excessive profits from the general public. Though monopolies are neither so numerous nor so complete in the United States today as they were under patents from the crown in England in the days of Elizabeth, organizations which have achieved more or less complete monopolies are numerous and vastly more powerful and profitable now than then. On the other hand the laborers in particular lines of employment have formed many organizations for the purpose of protecting their interests, and in some cases of effecting a monopoly of the supply of labor in a particular line by excluding all except members of their organization. There is a marked difference in the principles on which these opposing combinations are formed. The capitalistic organization is compact and firm. When a corporation is formed and its capital contributed, it does not fall in pieces so long as its business proves profitable. It has unity of purpose and of management. It is capital that is hazarded, not the persons or the services of the stockholders. The labor organization, however, from the nature of the combination lacks cohesive force. The laborers do not combine their efforts to carry on a business and distribute the returns, they do not contribute capital, except some small dues, they do not transfer to the organization any legal power to command their services. It is doubtful if the law as administered by the courts would tolerate an organization that did so. Yet to place organized labor in a position to contend with organized capital on equal terms, it would be necessary, not only that the legal power to control the services of all the

men in the combination should be conferred on a single head or board, but that sufficient capital should be also acquired to enable the laborers to live through any period of idleness. Though the members of labor organizations have in many instances exhibited remarkable steadfastness of purpose and have endured great hardships to accomplish the purposes of the organization, there is an inherent weakness, both in the principles on which such combinations are effected and in the poverty and consequent inability of the members to follow the directions of leaders when they cannot live without wages. Though the struggles between labor organizations and the railroad companies, mine owners, manufacturers and other great employers of labor is a matter of the highest public concern and often engrosses public attention, comparatively little of the time of the courts is taken up with such controversies. The title Master and Servant fills but one hundred and ninety pages of the Encyclopedia of Law. This is not an accurate gauge of the number of suits in the courts growing out of that relation, most of which are for small balances of wages in the inferior courts of which no report goes into the books. The questions arising on contracts for personal services are comparatively few and simple. The courts merely enforce the contract of the parties and, except in a very few special cases, never attempt to compel the laborer to specifically perform his contract.

The rules with reference to the organization of corporations have been greatly changed during the past century. At first a corporate charter was granted as a special favor, and the king or parliament in England and the legislatures in America fixed the powers and privileges of the corporation by the terms of the charter. Now new special charters are almost unknown and there has been a steady tendency toward allowing corporations to be formed to carry on any business that a private citizen may conduct. In this respect the tendency has been uniformly in the direction of abolishing all arbitrary rules of law, and also of allowing the corporations to formulate rules in the form of by-laws which determine the relations of members, stockholders, officers and employees.

Thus the supervising public agency, the political power, has been gradually withdrawn, and the power of private lawmaking by the corporation, steadily extended. This increased freedom of organization is highly beneficial. It allows the people to combine their capital, labor and energy for useful purposes, and thereby achieve results which they could not accomplish singly. Freedom of combination for laudable ends is quite as essential to the welfare of the people as freedom of individual action. Partnerships and corporations are methods of combinations in business enterprises requiring either more capital or more personal effort than one alone can supply. The corporate form is best adapted to great enterprises, and the railroads, telegraphs, telephones and most of the great manufacturing and commercial establishments have been constructed through the instrumentality of corporations.

There is no monopoly that could not be destroyed by merely taking away that on which it feeds, thus a water or gas monopoly can be destroyed by a combination of those who use the water or gas to supply themselves through their own corporate organization. If the people along the line of a railroad were to combine, build and use another to the utter exclusion of the old one, the old railroad would cease to have any revenue. The effort thus far has been mainly to regulate monopolies by law through the political power. Where cities construct and operate those utilities which are natural monopolies, though abuses in management occur, the ownership is always in the hands of those served, and they at all times have the power to correct them. Where a trade monopoly is formed, those suffering from its extortions may relieve themselves by combining and transacting the business through their own agency. The leading difficulties in the way of forming such combinations are mutual distrust and lack of understanding of the principles applicable to such combinations. The field is one so vast that no one can indicate the limit of possible accomplishment. Although the activity in the organization of corporations is so very great, none of them have reached anything like completeness, and the largest are mostly objectionable because the principles by which their

actions are governed are lacking in equity. Governmental systems, being merely of human construction, are operated mainly by arbitrary rules, founded on conceptions of expediency. In the effort to regulate public affairs the powers, duties and compensation of public officers and servants are established by fixed rules, it having been fully demonstrated in other countries that undefined power will usually be abused.

There are two leading purposes to be subserved by courts, the first is a public one, namely to afford a peaceful solution of all controversies, and thereby prevent fights and bloodshed, the second is to do justice between the parties. Most of the rules by which the actions of courts are governed commend themselves to the moral sense and have been adopted to promote justice. The desire to correct errors and secure absolute fairness, has, however, been carried to such lengths in the system which now prevails, that the endless pleadings, motions, orders, demurrers, new trials, appeals, writs of error and certiorari, primarily invented with the purpose of having the cause presented clearly and of correcting every error of the trial court and jury, have in fact resulted in such delays, expense and real injustice, that radical remodelling is imperatively demanded. The idea has prevailed that supreme courts could be made of men so deeply versed in the law and of such soundness of judgment, that they would not only be able to avoid making mistakes of their own, but could correct the errors of inferior courts and juries. The fact is however, that there are so many technical rules of procedure to be followed in presenting the case to the reviewing court, so many arbitrary rules of substantive law to be applied, and such a disposition among the judges of the courts of last resort to refine and exhibit their learning, that there is little in their decisions to commend them to the sense of justice of the plain citizen. It may well be doubted whether the verdicts of the juries are not on the whole far nearer just determinations of the cases before them, than the carefully worked out judgments of the highest courts. When the delays, costs and vexations incident to our long process of determining a cause are considered, they certainly more than counterbalance the

possible nearer approximation it may afford to a correct application of the law.

The decisions of the private tribunals established by boards of trade, exchanges and other commercial bodies are usually promptly given and accepted as final, and are far more satisfactory than the dilatory processes of the courts. The great desideratum is a system which will insure impartiality, and under which the end of litigation may be quickly reached. One defect in the jury system is that it is required that the jury be taken from the vicinage. Originally it was supposed that their knowledge of facts would aid them in coming to a right verdict. In the United States it is required that they be taken from the county or district, but it is also required that they shall have no knowledge of the facts. These two requirements are incompatible. Jurors of the vicinage will always have some knowledge of some things affecting an important case. Impartiality being so indispensable to right judgment, the jury should come from a place sufficiently remote to be wholly unacquainted with the parties and the facts of the case.

A very illogical system is followed in the determination of questions of fact and of law. The jury decides the facts of the particular case before them. Their verdict binds only the parties to that particular cause, yet the twelve men composing the jury must all agree on all essential particulars, or no decision can be had. Successive juries must be called till one can be found which does agree. The supreme or other court of last resort, made up of men specially trained and schooled in the law, decide, not merely what the law is in the particular case, but make a precedent, binding on all inferior courts, and generally so on themselves and their successors in all other like causes, yet a bare majority of the judges may decide the cause and establish the legal rule, no matter how strenuously the minority oppose it. This lacks little of absurdity. A majority might well be allowed to determine the facts, but the rule of law would seem to be a most uncertain guide, if some of the judges of the highest court dispute its existence. Some of the states have adopted constitutional amendments

allowing nine jurors to find a verdict in civil causes, and in practice this is found to be a great improvement. Unanimity may well be required in criminal causes where punishment is to be inflicted. The great defect in the whole system seems to lie in the division of causes into those to be tried by a judge alone and those to be tried by a judge and jury and in the attempt to complete a code of laws by the decisions of courts in causes between private parties. A combination of judge and jury with power to decide without appeal might work as well in practice as the special private tribunals above referred to. The Athenian system of juries made up of a vast multitude, though far too tumultuous as well as expensive to be practicable here, suggests the idea of the selection of a list of men of probity and intelligence to act as final judges in all causes. Perhaps if the parties were allowed to select such of them as they could agree on or, if they could not agree, were required to strike the objectionable ones from the list, so as to leave some convenient number to try the case, more satisfactory results would be obtained than now. This is merely a suggestion, for it is far easier to point out defects in an existing system, than to devise one which would remedy them and work satisfactorily.

In the nature of things the rules giving jurisdiction to and regulating the procedure of courts are purely artificial. Freedom of choice of arbitrators and judges tends to secure impartiality and acceptance by the defeated party of the award. The inherent difficulties attending the administration of justice are such that the ideal can never be attained in practice. Facts necessary to right judgment are unknown, the memory of witnesses is imperfect, the ability to state clearly and accurately what the witness knows is rare, jurors and judges fail to understand the witness as he means to be understood. These difficulties inhere in the investigation of causes when parties and witnesses are all perfectly fair and honest, when they are not so, fraud and perjury may be accepted for truth and sophistry for logic. Errors will be committed and wrong judgments rendered by the best conceivable court. The real gauge of advancing morality is not the infallibility of judges

or juries but the habit of just dealings among the people. The percentage of transactions which are made the subjects of litigation is steadily decreasing, and in the ideal state the compulsory processes of courts would be unnecessary. It is a fact of profound significance that crime has diminished as punishments have been made less severe. When petty larceny and a long list of other minor offenses were punished in England with death, crime was rampant and society was brutalized. When the state ceases to take life for any cause, the sanctity of human life is better respected by the people. As imprisonment for debt and seizure for the creditor of the clothing and household goods of the debtor is done away with, a higher standard of integrity, founded on a conception of right, is established. Though the compulsory processes of the law may not be safely dispensed with, a public sentiment, which insists on just dealings and right conduct and which educates each rising generation to advanced morality, is the best guarantee of social order.

Authorities

The Histories of Bancroft, Garner, Lodge, Watson, Wilson and Winsor have been consulted on matters of history. For the provisions of the early colonial charters the published charters have been examined, and for the provisions of constitutions and statutes the official publications have been used.

CHAPTER XXVI

MODERN MEXICO, CENTRAL AND SOUTH AMERICAN STATES

South America was discovered by Columbus in 1498, though he did not learn the extent of the continent. Following his discoveries the Spaniards devoted their attention mainly to the West Indies, Mexico and South America, and within fifty years thereafter had made conquests of those parts that displayed most gold and silver and were inhabited by the most advanced people. The purpose of the invaders everywhere was conquest and robbery. Natives were ruthlessly slaughtered and their property destroyed or carried away as suited the caprice of the victors. The native population of the West Indies was soon nearly exterminated. On the main land there was great slaughter of people and destruction of property at first, but later more friendly relations were established and there was much intermixture of blood with the natives. Owing to the number of the Indians and the extent of the country over which they were scattered, most of them survived, and their descendants, including full bloods and mestizos, constitute a large part of the population in all the principal states. The governments of the Mexicans, Peruvians and other most highly civilized nations were destroyed and Spanish military rule imposed in place of them. Along with the Spanish armies came priests at a time when religious bigotry was most virulent. Pope Sextius IV had established the Holy Office in Spain in 1478, fourteen years before Columbus made his discovery. The gloomy cruelty of the religion of the Aztecs in Mexico was well calculated to stimulate the zeal of the Catholic priesthood, and the Inquisition did bloody work in America as well as in Europe. Some conversions of natives were made and in time some of the spirit of genuine Christianity was manifested, but viewed at large the conquest was dual, and the people were subjected to

the domination of both a military and a priestly despotism. Spanish law was introduced and Spanish methods of government prevailed in all the subjugated countries. The ancient industrial organizations of Mexico and Peru were disrupted, and no equally efficient systems put in their places. Wealth was sought in the mines of precious metals, and the natives were enslaved and forced to work them. The King of Spain assumed ownership of the face of the earth, without regard to the occupancy of the natives, and parcelled it out to favorites in great tracts. In the islands where the natives had been exterminated African slaves were employed to till the soil, but on the main land there were sufficient Indians who were compelled to do it. Cattle, horses, grain and fruits were introduced from Europe, and some improvement in agriculture resulted from Spanish methods, but industrial development along any line was nowhere the leading purpose of the invaders. The search for gold induced them to encounter dangers and endure hardships, and throughout the continent they were very active as explorers and pioneers.

Brazil was discovered by both the Spanish and Portuguese in 1500, but the Portuguese gained ascendancy and effected permanent settlements along the coast. The plan first adopted by the Portuguese government was to grant captaincies, each extending fifty leagues along the coast, to those who should undertake to make settlements. The first captaincy was located at S. Vincente in 1531, and others followed, so that by 1549 they were of such importance as to induce the crown to establish a governor-general at Bahia. Rio de Janeiro was settled in 1567. The early settlements of Brazil differed from those of the Spanish colonies in the purposes of the settlers, which were to cultivate the soil and raise live stock rather than search for gold. This may have been due to the fact that the natives of the coast of Brazil did not display gold and silver as the Peruvians did, rather than to a difference in the characters of the Spanish and Portuguese. Be this as it may, the subsequent development of the different colonies shows the difference between the prosperity resulting from the mere acquisition of gold by robbery and that which

follows useful industry, cultivation of the soil and the breeding of cattle, horses and sheep. The gold so long as it was retained produced nothing and neither fed nor clothed the possessor. It could be used in making purchases once, and once only. The sugar and coffee plantations and the flocks and herds on the grass lands grew, multiplied and year by year yielded larger returns. Nature multiplied the rewards of industry and thrift and passed them on to succeeding generations, but the gold of the conquerors was sterile. But the Portuguese were not content with the proceeds of merely their own labors. They enslaved the natives and imported great numbers of slaves from Africa. Their prosperity however was seriously handicapped by trade restrictions imposed by the Portuguese government, which prohibited all direct dealings with other nations. In 1578 Portugal and its American possessions passed under the dominion of the Spanish crown and so continued till the restoration of the royal house of Portugal in 1640, after which Brazil was again a Portuguese dependency. There was some fighting with British, Dutch and French rivals as well as with the natives, but the Portuguese seem to have been more successful in establishing friendly relations with the native tribes than the others and were able to hold their ground.

As a consequence of the invasion of the Iberian Peninsula by the French under Napoleon the royal family of Portugal sailed for Brazil in 1807, accompanied by many of the nobility, and established the court there. Brazilian ports were then opened to trade with other nations and a great impetus was given to all kinds of industry. The court was maintained in Brazil until 1821, and the unprecedented situation of a European kingdom ruled from America was presented in the government of Portugal by the King in Brazil. The King then returned to Portugal, leaving his son Dom Pedro as regent of Brazil. The political independence of Brazil was agitated soon after the departure of the king, and on Dec. 1, 1822, Dom Pedro was crowned Emperor of Brazil. A constitution was adopted and sworn to by the King March 25, 1824. Portugal recognized its independence in 1825. Dom Pedro and his

son who succeeded him were very popular as rulers, and Brazil escaped serious political disturbances till near the close of the century. But republican sentiment grew to such strength that in 1889 a bloodless revolution took place, the royal family was sent to Portugal, and on Feb. 24, 1891, a republican constitution was adopted which established a federal government and erected the former provinces into states. This constitution is in some respects the most advanced of any yet adopted.

Spanish domination over the rest of Latin America continued until 1810, when revolutionary movements began in Argentina, Chile and Mexico. By the end of twenty years thereafter Spain had lost substantially all her foothold on the continent, but retained Cuba and Porto Rico until 1898. From the first conquest till the end of Spanish rule the relation of Spain to her American possessions was that of a distant military ruler. From sheer necessity the colonists, especially along the Rio de la Plata, were at times forced to effect military organizations of their own for protection against the Indians and hostile Europeans, but nothing like efficient local self-government was established till after allegiance to Spain had been renounced. The superior civilization of the natives of Mexico and Peru over those of most other parts of America seems to have complicated the problem of establishing settled free institutions rather than to have simplified it. In Mexico and South America the Indians and mixed races still constitute a large majority of the population, but in varying combinations in the different states; thus in Mexico about fifty per cent of the whole are Indians, thirty per cent Mestizos, and the remainder of Spanish and other European stock with a few Africans and Asiatics; in Peru fifty-seven per cent are given as Indians, twenty-three per cent Mestizos, and the balance Spanish descendants with a few foreigners, negroes and Chinamen; while in Brazil about forty-five per cent are white, thirty per cent mixed white, negro and Indian in varying combinations, fifteen per cent Africans and ten per cent Indians. In recent years there has been an influx of Europeans, especially into Argentina and

Chile, and Americans from the United States are constructing lines of railroad and establishing business enterprises and combinations in increasing numbers, so that there is a well marked tendency toward similar conditions with reference to the intermixture of the people from all parts of the world under free institutions to those in the United States. But in the United States the Indians are now negligible as a political element, while throughout Latin America they are still dominant in many parts and in fact furnish the leaders in many of their struggles. The superior industry and thrift of the southern races has enabled them to survive in contact with the whites, notwithstanding the oppression to which they have been subjected, while the indolent and improvident northern tribes have faded away.

A Spanish settlement was made in Jamaica in 1509, in Cuba in 1511, and in Venezuela in 1520; Mexico was conquered in 1519, Peru in 1532, and Buenos Ayres was founded in 1535. It was not till 1607 that the English effected their first permanent settlement in the United States. Spanish dominion was asserted over a territory of more than double the extent of the present continental possessions of the United States at a period almost a century before the settlement of the United States commenced, yet the total population of Latin America, including the descendants of the native races, is less than two-thirds that of the United States. The difference in the progress of the northern and southern countries is a theme worthy of extended study, but it can be given only brief consideration in this work. The Spanish colonies all started as dependencies of the Spanish crown ruled by viceroys and military force, while the British colonies were planted under charters encouraging organization for self-protection and local self-government. Spanish favorites were granted vast tracts of land, and so long as Spanish rule continued the inhabitants were divided into a few rich, a multitude of poor and a small middle class. In the British colonies there were some large grants of land, but small farms tilled by the owners were the rule, especially in New England. Illiteracy was the rule in Latin America and learning was confined to the

few and mainly of the priestly, religious sort, while in the north it was more general and rigidly Puritan in New England. At the time of the revolt of the British colonies there were more Europeans in Latin America than in those colonies, but they were distributed over a much greater territory, extending from Santa Fe, New Mexico, to the settlements in Chile and Argentina. The West Indies then produced sugar, tobacco and other products to which they were especially adapted in such quantities as to make trade with them a matter of importance; the plains of the southern half of South America offered pasturage without limit, and Brazil was already noted for its coffee. Though gold and silver from the mines continued to allure the Europeans, the value of the products of agriculture and the herds far exceeded that of the mines.

The ships which transported the precious metals from the Spanish colonies were tempting prizes, and pirates infested the southern seas and found secure hiding places on the islands and along the coasts. The code of morals of the Spanish conquerors, which was applied in dealing with the natives, answered the requirements of the pirates in their operations. The West Indies were coveted by other European powers: dominion over them was determined by the law of might, and Spain was unable to hold all of them. In Mexico the authority of Spain was maintained without serious difficulty till the revolution, but in South America there were many serious conflicts with the natives and occasional wars over the conflicting claims of Europeans.

In 1810 the spirit of revolt broke out in Mexico, Argentina, Chile and other parts of America, and continued to spread and grow in force till an end was put to the authority of Spain in all of her continental possessions. Republics were established with constitutions modelled after, though differing in some particulars from, that of the United States, but the people were not able to rid themselves at once of the evils of military rule. The necessity for the long struggle to gain orderly liberty arose from accepted legal theories of property, the structure of society and the characteristics of the

people. Royal grants had given dominion to favorites over vast tracts of land, and the multitude of the poor were virtually slaves. There was no common school system and only the children of the rich were educated. What is commonly termed the middle class was wholly wanting on the great estates and few in numbers anywhere. Trade developed as products of the land increased, but there was little tendency to improve on primitive methods of manufacturing coarse fabrics and crude implements. There were no great business combinations establishing common interests or educating to concert of action in peaceful pursuits. Such conditions have always invited the combinations of the robber and military adventurer. Where the avenues of success in legitimate industry seem closed or surrounded with intolerable difficulties, the warlike instincts of the savage assert themselves, and bold spirits lead reckless followers in attempts to substitute their forcible mastery for that asserted under the law. While nature offered the most bounteous provisions for human welfare throughout the continent, the relations of men to each other were such as to entail misery and suffering on a large part of the people during much of the time.

Notwithstanding these untoward conditions able, educated men disseminated high ideals of political organization throughout Latin America and governments were established based on principles of liberty, equality and law. The struggle to overcome the unsocial conditions has been long and often discouraging, but of late the progress in all the leading states of South America has been most marked and gratifying. Following the establishment of republics immigration from all the nations of Europe was encouraged, and the process of making new states out of a combination of vigorous people of different nationalities, all admitted on an equal footing, has gone on with constantly accelerating speed. Colombia led in the line of education and established a compulsory school system in 1870, and the other states have made much progress in establishing educational institutions. The element of educated people above immediate want, yet under the necessity of being useful, is growing steadily in

numbers and influence. While many of the rich have grown vastly richer from the general prosperity, the ratio of the abjectly poor has been materially diminished. The process with which we are so familiar in the United States of organizing large industries, importing great numbers of cheap laborers for the rough work connected with them, educating them and their children and soon seeing them self-reliant and often leading citizens, is now fairly under way in the leading South American states. This process has been viewed with much apprehension in the United States and has its disadvantages, but the prejudices which have been manifested successively against Irish, German, Scandinavian, Italian, Pole, and Russian laborers have given way one by one, and their children are taken into full fellowship as American citizens with little or no discrimination against them on account of the nationality of their parents. The problem of assimilating Africans and Asiatics is one of more difficulty, but education and even handed justice are found to be all that is necessary to render it possible for all races to become mutually helpful and prosperous.

After a century of effort to establish orderly popular government the South American states are enjoying general tranquillity and prosperity, and in some particulars lead rather than follow the march of civilization. Mexico was afflicted with almost constant civil war from the revolt of 1810 till the accession of Diaz in 1884. He maintained order and observed the forms of constitutional government without much regard to the substance. Through requirements of unobtainable proofs of title to lands his government confiscated the holdings of multitudes of poor peasants for the enrichment of favorites. He encouraged the investment of foreign capital, and during his long rule many miles of railroad were built and many new industries established, but all on the insecure basis of a vast multitude of illiterate homeless poor, at the mercy of either great landholders or corporations, with reliance on military force to preserve order. Following his reelection in 1910 a revolution caused him to leave the country, and on May 25, 1911, Francisco I. Madero became provisional

president. Since the overthrow of Diaz the weakness of the social structure of Mexico has again become apparent. There are not enough people schooled in the principles of government and devoted to social order to curb the ambitions of immoral leaders. The brief career and tragic death of Madero and the subsequent struggles of rival leaders give again a most unhappy illustration of the evils attending ignorance and oppression. The progress in industrial development which had been made is not merely at a standstill, but retrogression has set in. The task of establishing order and justice through the popular elements as they now exist is one of great difficulty, but real progress can only come through a public sentiment that condemns the bloodshed and robbery that has become prevalent, and the organization of a public force sufficient to maintain order and used for the protection of rights instead of the perpetration of wrongs.

The Latin American states all have constitutions framed on the general lines of that of the United States, but most of them are much more elaborate in details. All distribute the governmental powers among three separate departments, executive, legislative and judicial, with a president as executive head, two houses in the legislative branch and judges independent of both. Councils of State variously composed, under different names and with differences in powers and functions are provided for in the constitutions of Chile, Mexico, Colombia, Ecuador and Peru. There are differences in the terms of office, thus in Venezuela the term of the president is two years, in Mexico, Brazil, Ecuador and Honduras it is four years, in Chile five, and in the Argentine Republic and Colombia six years. The terms of deputies or representatives are two years in Ecuador and Mexico, three years in Brazil and Chile and four years in the Argentine Republic, Colombia, Venezuela and Honduras, and of senators four years in Mexico, Ecuador and Venezuela, six years in Colombia and Chile and nine years in Brazil and the Argentine Republic. Judges of the highest courts have terms of four years in Venezuela, and Honduras, six years in Mexico and Ecuador and during good behavior in the Argentine Republic, Brazil, Colombia and Chile.

The constitutions of Chile of 1833 and of the Argentine Republic of 1860 abolished slavery and prohibited the slave trade at times when slavery was the most noticeable institution maintained by law in nearly half of the United States. The more recent constitutions also show the march of ideas and contain good provisions not to be found in that of the United States. The constitution of Brazil abolishes the death penalty except under military law in time of war, and that of Venezuela abolishes it without any reservation. On the subject of waging war Brazil has the honor of taking the most advanced ground in its fundamental law of any nation. Article 88 reads: "The United States of Brazil shall in no case undertake a war of conquest directly or indirectly of themselves or in alliance with another nation." Congress is empowered "to authorize the government to declare war, if there is no opportunity for arbitration or if arbitration has failed, and to make peace." The five Central American States in 1908 established the Central American Court of Justice under a treaty which binds them to submit to its judgment "all controversies or questions which may arise among them of whatsoever nature, and no matter what their origin may be, in case the respective departments of foreign affairs should not have been able to reach an understanding." Kings and hereditary rulers of all kinds may regard it as inexpedient for them to abstain from the use of military force to further their ambitions, but the interests of the people and the moral law are always opposed to war. It is the interests of rulers and privileged classes only that are likely to be adversely affected by the judicial settlement of all international disputes. The welfare of the whole people of all of the nations would be promoted by a universal treaty of arbitration similar to that of the Central American States.

Argentina, Chile and Ecuador support the "Apostolic Roman Catholic church," and Colombia recognizes its right to administer its own affairs, but without formal recognition as the religion of state. The constitution of Mexico provides, "The state and church are independent of one another. The congress may not pass laws establishing or prohibiting any

religion," and "The simple promise to speak the truth and to comply with the obligations which have been incurred, shall be substituted for the religious oath, with its effects and penalties." That of Brazil contains the following: "No cult or church shall receive an official subsidy nor have relation or dependence or alliance with the government of the Union or of the states."

Viewed as a whole the recent progress of the Latin states has been quite rapid. Steadily advancing moral standards are being adopted, and the curse of war is less frequent in its visitations. The Argentine Republic, Brazil and Chile especially exhibit growing industries and commercial activities and an inclination to seek all that is best in improved systems of organization, not for the destruction of mankind by war but to benefit them through combinations for good purposes.

Authorities

Glynn: Foreign Constitutions.

Dodd: Modern Constitutions.

Baldwin: The New Era of International Courts.

GENERALIZATIONS

I. POVERTY OF HISTORY

The earliest records that have come down to us are those of the Egyptians, Babylonians, Aryan invaders of India, and Chinese. These people had their several written languages, that of the Chinese being so radically different from the others, as to indicate no probability of suggestion from the others. The others bear no close resemblance to each other, yet may all have been outgrowths from the same primitive suggestion. All dwelt between the twentieth and thirtieth degrees of north latitude and all were Asiatics, except the Egyptians who inhabited a small district in the northeast corner of the African continent. The extent of the countries inhabited by them and the Israelites and other tribes with whom the Egyptians and Babylonians came in contact and of whom we have any very early account could not have exceeded one-tenth the area of Asia. We have no records of any other people extending back to even one thousand years B.C. We have no knowledge of the governments or laws of the people who dwelt in the balance of Asia and Africa, or in any part of Europe or America prior to that time. Greek and Roman records take us back less than three thousand years, less than one hundred generations of men. When we consider how slowly the art of writing and reading was disseminated and the state of comparative isolation in which the various people dwelt, it is not surprising that the lessons to be drawn from very early times are so meager. The Chinese constructed a written language and a theory of government and system of laws under which one-fourth of the people on the earth now live. At the other end of the line of early civilization the Egyptians in a far smaller country produced their peculiar civilization. Each of these people was substantially isolated from the rest of the world for

long periods of time and was able to live in peace in a very fertile country substantially secure from outside foes under conditions favorable to the study of agriculture and the arts. Babylon was also located in a very fertile valley and flourished for a long time, but was always exposed to attacks from without, and finally went down before the Persians. The conquerors of India maintained their ascendancy by their arms and religious teachings and still preserve their caste superiority. The idea of government generally entertained by all these people throughout all the ages was unlimited paternal power in a single monarch, who however was expected to rule in accordance with established laws. All authority centered in and emanated from the king. No great representative body was chosen by the people to express their views or check the abuses of power. In their religious and classical books the Chinese and Brahmans expressed just sentiments concerning the legitimate functions of government, but they failed to devise effectual checks to prevent the abuses of power.

The record of European civilization starts with the Greeks and Romans and at a period very much later than that of the Egyptians, Babylonians and Chinese. The accessible accounts of their public doings are much more full, and their influence on western civilization has been much more potent. While the Greeks tried many experiments and exhibited wonderful brilliancy and vigor, their governmental structures were relatively small and shortlived. The Romans were more successful and steadily extended their system of government and laws till it covered southern and western Europe, northern Africa and Asia Minor. Their empire went to pieces before the onslaughts of the northern and eastern tribes, and the territory covered by it is now divided among the nations of Europe and with the Mohammedan Turks. Of the peculiar civilizations that developed in Mexico, Central America and Peru we have no native historical accounts, and the European observers saw them for only a short time. They had no written language, but the Mexicans had made some progress in picture writing, and the Peruvians used the quipu for records and messages. Their civilization developed in isolation and

so far as we know without being influenced by suggestions from without.

Since the discovery of America and of the ocean routes to India and the far east, new conditions have existed and the people of the various countries have from time to time felt the force of external impulses. Instead of delving into history for precedents in the structure of governments, contemporaneous examples, adapted to modern needs and conditions are now more regarded by the people of every nation.

2. METHODS OF ACQUIRING AND CONFERRING POLITICAL POWER

The influence which operates most powerfully and swiftly in promoting concert of action for public purposes is war, present, threatened or contemplated. The exigencies of war demand combination of all those having common interests and concentration of authority to direct the movements of all in a single head. The most primitive political power is that of the leader of a tribal war party. Such leaders have been found everywhere and in all ages among savage tribes. The duration of the leadership has depended on his capacity, the needs of the tribe and their wishes and purposes. The leader's authority over people in the hunter state rarely extends beyond his immediate tribe. Pastoral and agricultural people who can make provision for the support of larger bodies of men for longer periods effect larger and more permanent combinations. The general rule has been that the larger the combination the more arbitrary and despotic the power of the leader. Ignorance, illiteracy, poverty and inadequate means of communication limit and condition the extension of power. So far as we are informed the only large combinations evolved in America by the aborigines were those in Mexico and Peru, where the people had made much progress in agriculture and manufactures and in building roads, the transmission of messages by runners and picture and sign language. The earliest known Egyptian and Asiatic conquerors were backed by industrious multitudes

who provided for their armies, and knew the use of written words. Numberless military despotisms over more or less extensive territories have been superimposed on existing systems of government by military leaders, of whom Alexander, Caesar, Charlemagne, Genghis Kahn and Napoleon are conspicuous examples. The common characteristic of all such leaders has been ruthless destruction of human life to further the ambition and often to gratify the malice of the leader.

The patriarchal idea of government, typified by that of the imperial government in China, and which prevailed quite generally throughout Asia, though despotic in character, was in some measure an outgrowth of the multiplication of families and tribes by natural increase and the extension of the authority of the patriarch over the enlarged family. The power of the patriarch has usually been supplemented by military force as occasion has been presented, until the great kingdom or empire has been established. Military force has been the main instrument employed in the formation and perpetuation of most of the great governments throughout all historic times.

Next in potency and universality of employment have been religious teachings. The religious beliefs and the superstitions of a people are the products of suggestions from their environments, and of fear, desire, hope, imagination, and inspiration. They are gross and absurd or pure and exalted according to the capacity and character of those who entertain them. In Peru and other countries where cloudless skies prevail the sun has been adored as the great life-giving power. The early mariners of the Mediterranean Sea feared the wrath of Neptune, god of the sea. In the mountains and plains of northern India, Indra, the god of storms, was seen in the tempests. Among warlike people, the god of battle under a great diversity of names, Siva, Jehovah, Mars, Thor, Allah, has been called on for aid in bloody strife. Other gods in endless variety have been named to meet the requirements of the situations with which tribes and nations have been confronted. That religious impulses are most potent in influencing the conduct of the people is patent to all intelligent

observers. This has led crafty men in all ages and countries and in all stages of social development to use the beliefs and superstitions of the people as a means of mastery over the multitude. Occasionally a man has appeared who could draw a multitude to his support by advancing a new creed or a modification of an old one like Mohammed, but ordinarily accepted beliefs have been taken advantage of. The methods of utilizing these beliefs and the special purposes for which they have been employed are as varied as the human mind can readily conceive. The superstitions of savages have been utilized to influence the actions of one or a number and to gain merely a temporary or a continuing mastery. The religions which combine the purest ethical principles with their beliefs have been found the most serviceable. Dread of reptiles, beasts and birds has led savages to attribute supernatural powers to them, and people so highly civilized as the ancient Egyptians and Hindoos have deified them. The Chinese dragon, the griffin and other imaginary monsters are fanciful extensions of the pantheon. Whatever the particular form of the superstition, the medicine man or the priest claims special relations and influence with the supposed supernatural power, teaches the multitude that such relation exists, magnifies its potency, claims ability to use it for their good or ill here or hereafter, and induces obedience to him through hope and fear of the supernatural and incomprehensible.

In the more advanced states of society religious domination has been at times distinct from the secular, but far more frequently in combination with it. The combinations have taken a variety of forms. The early Brahman priests combined with the military order of their race to secure their ascendancy. The priests taught the mysteries of their religion, the superiority of their caste, the secular power of the military men and the duty of all others to respect Brahmans and Cshatriyas. Moses led the children of Israel with the aid of Aaron as his mouthpiece in religious instruction. The Greeks consulted their oracles, some of the most noted of which professed complete independence. The Church of Rome has ruled mainly by the use of ecclesiastical expedients,

but always with some aid from the temporal powers and at times by the use of military force. Most of the great and enduring despotisms have closely combined a priestly system with military power. In the Chinese, Mohammedan, Russian and ancient Peruvian empires there was strict identity of head in ecclesiastical and temporal government. The emperor, the caliph, the czar and the inca were each at the same time supreme representatives of the overruling spiritual being and fountains of all temporal power in their dominions. Though the taboo among Polynesians and the gross superstitions of African and American savages have been used with great effect, they have never afforded a foundation for the erection of any great or enduring empire. The greatest priestly combinations have been built on more lofty religious conceptions. Chinese philosophy and the religious teachings of Gautama have been utilized in combination with some gross superstitions in maintaining rulership over the Chinese multitudes. Mohammed, the image-breaker and apostle of one living God, propagated the word by the sword with irresistible power and sought to forcibly reform many prevailing abuses. The Czar as the head of the Greek church has led his armies and wielded his bloody despotic powers in the name of the meek and lowly Prince of Peace. The Inca as the high priest of the Sun stood at the head of the religious establishment and was at the same time possessed of all temporal power. The Greeks and Romans in accordance with their democratic ideas took the gods of all the peoples into their Pantheon, and the Greeks especially allowed their gods to take opposing sides in their conflicts and war with each other. Though the Romans consulted their priests and augurs and paid great regard to religion, the secular power dominated till the fall of the empire. The Papal power, extending over Europe, into Asia and Africa and then America is unique in character. Its basis is the same as that of the Greek church, but it has stood through so many centuries as a power apart from and much of the time superior to the sovereigns of the Catholic nations. Kings and emperors, while claiming unlimited temporal power, have acknowledged the spiritual mastery of the Pope. Through-

out all the dark ages the priesthood monopolized nearly all the learning, and temporal rulers were dependent on them to teach the ignorant multitude the doctrine of the divine right of kings to rule and the religious duty of the people to submit and obey. In return for this service the kings gave them title to lands and allowed them to collect tithes and other revenues for the church. Thus there was a close confederacy between the spiritual and temporal rulers, giving mutual support to each other's authority. The breaches between the clergy and the crown paved the way for emancipation from the religious yoke and afterward for political freedom. In recent times there is a marked tendency to completely divorce church and state.

The third method of acquiring political power is by the voluntary choice of the people for the accomplishment of their purposes. This method has been far more generally employed by people in all parts of the earth than is commonly realized. The American Indians and most other savages chose their chiefs and determined most of the important affairs of the tribe in a general council of all the men. Democratic assemblies are not strangers in the greatest despotisms. In the villages of China and Russia the people have long been accustomed to choose their head men and manage their local affairs. A similar village system has long prevailed in India. The ancient Persian monarchs ruled most of their subjects through a tribute system, and the villages were free to regulate their local affairs through the elders and patriarchs chosen or recognized by them. In Europe democratic institutions were not limited to the Greek and Roman cities of early times, but were common in the cities of Italy, Germany and Russia in medieval times. Strictly democratic institutions were universally confined to the people dwelling within a city or small district of country. This resulted from the necessity for consultation and public gatherings of all, which was only practicable where the people were in close contact with each other and had common interests and purposes. Though the Roman republic was extended into distant provinces, no system of general representative government was

built. The general affairs of the republic were regulated from Rome, and the local affairs in the provinces were managed by the people through their domestic governments. It is still impracticable for the multitude to gather from all parts of any large district of country and transact public business in a general assembly of all. Direct action of all the people on matters of general policy has become possible through the aid of printing presses and improved facilities for the transmission of information and consultation between people distributed over a large territory. We now can act directly through the ballot, not only on constitutions but on general laws of all kinds that are referred to the people for approval or rejection. Brief terms of authority have been the rule in all democracies. Great activity and rapid changes in the official system and the purposes of the community as well as in the persons chosen as leaders have occurred everywhere. Diversity of conditions seems to render the management of purely local affairs a matter which should be confided to the people concerned. Outsiders are in no position to act intelligently and have no sufficient motive for forming correct judgments concerning the interests of other communities. The number of public questions as to which the multitude can inform themselves at any given time is necessarily limited, and the highest measure of success in popular government is dependent on the submission of each question to the body of voters or to such representatives of them as can give it the best consideration and will act for the interest of the people concerned.

It is only in modern times that popular government has been extended by the selection of representatives chosen to act in place of the multitude in matters affecting more people and larger district than can meet in general assemblies. The principles of representative government are simple and readily understood. The whole country is divided into such provinces and districts as seem necessary or convenient for the regulation of their affairs and the transaction of public business in them. The United States of America may perhaps justly claim to have been the pioneer in forming a representa-

tive system, adapted to unlimited extension among homogeneous people. The ascending series of general political divisions is towns, counties, states and United States. The people of each of these divisions choose the officers who conduct the public affairs of all the districts within which they are included. Aside from these divisions there are the cities with varied plans of representative city government, judicial districts and districts from which members of the legislative bodies are chosen. While the United States has ruled and still rules territories and dependencies through the general government without allowing either full local self-government or representation in the general government, such rulership is outside of and opposed to the general principles on which the government is constructed. The theory adopted in this regard has been that such government has been merely temporary and preparatory to the establishment of the general system followed in the states. The general government of the United States is of limited powers conferred for general purposes by the constitution or implied from it. All other political power is reserved to the states and the people thereof. The value and efficiency of all these governmental agencies is dependent on choice of representatives. The ever present difficulty is for the people to know which men will act for the best interests of the public, and which will sacrifice public to private, corporate or party interests. Without the aid of modern means of communication and dissemination of information these difficulties, with the present heterogeneous elements in our population, might be insurmountable. As matters stand there is ample room for great improvements in our methods of selecting officials and representatives of the people.

The British Empire is constructed in accordance with far more flexible theories, and can adapt its governmental machinery to the varied stages of social development from African savages to the socialistic colony of New Zealand. It rules in India as a military despotism and in Canada and Australia allows full liberty of self-government. Only the inhabitants of the British Islands are represented in the gen-

eral government of the empire, but the people of the colonies make their own laws and conduct their home affairs with practically no interference. Instead of extending the system of representative government so as to include representatives from remote parts of the empire, the tendency now is to allow what is called home rule to Ireland and thereby to further divide legislative authority. But this is really in accord with the American plan of allowing the people of each state to make laws adapted to their needs and views.

The spread of representative government since the American Revolution has been very rapid. In the western hemisphere practically all the governments are republics in form, except the European dependencies. In Mexico and Central America military force is still resorted to for the establishment of political power at times, but it is to be hoped and expected that stable governments based on free and fair elections and submission to the will of majorities will soon be maintained as they now are in the Latin states of South America. In Europe Switzerland and France are well established republics, and Portugal has recently become one. Following the great war republican governments have been established in Germany, Austria, Poland, Czecho-Slovakia and several of the other new states, while Russia is struggling with the experiment of a government of the labor organizations, called soviets. In Asia, Japan, Persia and Turkey are constitutional monarchies. The Manchu dynasty in China has been overthrown and the people are endeavoring to establish a republic under conditions of much difficulty. The inertia of long established customs, instilled in so great a mass of people, is hard to overcome. With this accession to the ranks of the republics of the earth the aggregate population of them jumps from about 200,000,000 to 600,000,000. It thus appears that the only great country, inhabited by civilized people, in which popular representation in the government is wholly denied in India, which is ruled as a dependency by Great Britain. There is a great diversity in the meaning of the term limited monarchy as applied to the different governments. In

Great Britain the power of the king has been reduced to a shadow and the hereditary house of lords to little more than an advisory body, while in Germany the emperor before and during the Great War was the war lord and the weapons of a despot at his command. When it is considered that the doctrine that kings ruled by right divine and was firmly established and maintained all over the world till the eighteenth century, the progress of representative government appears very marked and rapid.

Representative government does not imply that all governmental functions are performed by men chosen directly by the voters. In the United States the President is chosen theoretically by an electoral college, but in fact by choice of candidates made by party conventions and choice between these candidates by vote of the people. The President as the representative of all the people appoints all the heads of the executive departments, all the diplomatic and consular representatives of the nation, all the federal judges, and tens of thousands of inferior executive officers. The more important of these appointments require confirmation by the senate, and in practice most of the local officers in the states are selected by the senators and representatives, on whose recommendation the president appoints them. Some of the chief executive officers in turn appoint a great number of subordinates in their departments. Under the constitution as it was originally adopted the people did not choose the members of the senate, but the state legislatures elected them. An amendment has recently been ratified by the states providing for their election by direct vote of the people. The governors of the states and the mayors of the great cities also appoint great numbers of executive officers, some of whom require confirmation by the state senate or city council. All members of the state legislatures, most of the state judges and nearly all the county and township officers are elected by popular vote. In the United States changes in the cabinet are dependent on the pleasure of the President, while in France, Great Britain and other European states, they are dependent on the will of Parliament. While there is some diversity of methods in the

various republics, political power is conferred in each of them in all the ways above mentioned.

In the constitutional monarchies not only is the king or emperor indebted to a law of inheritance for his office rather than to the people, but there is an upper house of the parliament made up of hereditary nobles or royal appointees or both who are not accountable to the people for their action nor subject to removal by them. In some countries the hereditary nobility exercise great influence in the election of members of the lower house. The requirement of property qualifications as a condition to the right to vote in some countries renders the lower house a representative only of the privileged classes. In all these countries however there is an unmistakable tendency to restrict the exercise of arbitrary power and make the military subordinate to and dependent upon the civil power.

3. METHODS OF AND PRINCIPLES APPLICABLE TO THE SELECTION OF PUBLIC OFFICERS

All governments, however established or whatever their forms or functions, are more expedients, without moral attributes, and doomed to successive changes in methods of conferring power, in functions, and in purposes. It does not follow that any of these are matters of indifference, or that the government is any the less a necessity. The men who direct the operations of government have moral attributes, and it is of the utmost consequence that those best qualified for the discharge of the required duties and most devoted to the general welfare be chosen. Some general principles may be declared with reference to the methods which tend to good and bad selections of officers. First, the selections should be made by those whose sole purpose is to promote the general welfare. The purpose of the military despot in making his choice of officers is to secure fidelity and efficiency in the execution of his will. His own interests are the prime consideration and may be the sole one. It is morally possible that a despot may be wholly devoted to the welfare of his subjects, but it is hardly possible that the influences surround-

ing him will be of such character. The courtier is usually actuated by selfish motives, and his suggestions and recommendations are ordinarily made to promote his own rather than the public interests. The same principles apply with more or less force to all monarchical and oligarchical governments. The influences controlling all appointments are special and personal rather than general and public. Where the selections are made by the whole body of persons whom the officer is to serve, the general motive must be public and to promote the welfare of all. Theoretically the desirable motive dominates in popular elections. It often happens that a small but influential number of persons succeed in dictating the nomination and procuring the election of officers who are devoted to their personal interests or favorable to schemes for the advancement of special interests. Ambitious candidates, though lacking in moral purposes and qualifications for the offices to which they aspire, may yet be experts in the art of getting votes and succeed in defeating opposing candidates who are far more worthy. Under all popular governments there is a constant tendency for the people to divide into political parties, the members of which act in concert to secure the election of the candidates of their choice. Like most other expedients employed by a free people in their public affairs party organizations have their good and bad influences. They ordinarily secure ample criticism of the official conduct of officers of the opposing party, and sometimes are quite efficient in bringing to public attention candidates well qualified for the positions to be filled. They also are capable of exerting good influences on the officials while in office. On the other hand there is a marked tendency for political parties to fall under the domination of leaders whose main purpose is personal and party advantage, and who resort to immoral means to accomplish results. It is well to have the opposing sides of all public questions discussed and to have the merits and demerits of candidates made known, but it sometimes happens that the purpose is to deceive and mislead rather than to correctly inform the public. The evils incident to popular choice are however temporary and such

as are incident to human weakness and imperfection. The underlying and continuing motive must still be good.

Second, selections of representatives and officers should be made by those having sufficient acquaintance with or information concerning the candidates to enable them to judge fairly of their qualifications. It is apparent that the members of a tribe or a small community may know all the prominent men in it and express an intelligent choice for leaders. This accounts for the wide prevalence of democracy in the primary political organizations of so many countries. When the choice is made for larger districts personal acquaintance with the candidates become less general, and the voters must rely on information derived from others. When the selection is for a large province a great state or a whole nation most of the people must rely wholly on such information. Ample means of intercommunication between the people of all parts of the territory affected then becomes indispensable. The growth of representative government has been contemporaneous with and dependent on modern inventions and improvements in means of spreading information and interchanging views. The printing press, postal service, railroad, telegraph and telephone, have done much to eliminate the difficulties interposed by distance. Instant communication with all the centers of civilization throughout the world is now not only possible but common. The practical difficulties in the way of affording full and correct information as to the character and qualifications of men and the merits of public measures among the multitudes in great states are still very serious obstacles to be overcome. A considerable part of such information as is in fact scattered among the people mainly emanates from those having special interests to subserve as candidates or otherwise. This may be colored with falsehood. A far more serious practical difficulty of similar nature lies in the want of time, opportunity and capacity of the average citizen to fairly consider and decide upon the merits of a great number of opposing candidates for many different offices. When it is considered that each American citizen is in some measure responsible for the selection of hundreds of

thousands of officers high and low, the physical necessity for selection and appointment through representatives is apparent. All the people could not possibly take part in the direct choice of all the officers. Representative government implies not only popular selection of the legislative bodies, but also of the appointing power that fills the executive offices. Schemes have often been adopted under which a body of men chosen by the people chooses another body which makes the ultimate choice of the persons who are to perform the official duties. This was the method of electing United States senators, who wielded so much power and influence in the selection of judicial and executive officers. The people elected the members of the legislatures, who then elected the senators who named the appointive officers. This system has been found open to two most serious objections; it interferes seriously with the legislative work, and gives an opportunity for those who seek special privileges and advantages to exert undue and often corrupt influences in the selection of the senators. Since this provision of the constitution has been changed, all legislative officers in the United States are chosen by direct vote of the electors. There is a rapidly growing feeling that federal judicial officers should be chosen directly by the people, in place of being appointed for life as now. There has also been a tendency to add to the list of executive officers on the ballots at the popular elections, but the impossibility of making an intelligent choice between so many candidates who are strangers to most of the voters is apparent and becoming recognized. Selection of those who fill minor executive offices by their superiors who are directly chosen by and accountable to the people seems to produce the best results.

Third, those who make the choice of persons to fill public offices should have a general understanding of the nature of the duties to be performed and be in a position to judge of the qualifications of the candidates. It is still necessary, however, that the leading motive actuating those who make the choice should be to promote the public welfare. Those specially skilled in a science, profession or business are generally better qualified to select officers whose duties relate

thereto than the general public, but they are liable to have personal or class interests to promote. Lawyers are better qualified to select judges than laymen, and physicians and surgeons health officers, but the interests of the profession might not always coincide entirely with those of the public. The principle of expert selection of experts is, however, quite too generally neglected.

4. DIRECT LEGISLATION. INITIATIVE AND REFERENDUM

Though the initiative and referendum are generally looked on as new, they are mere extensions of the familiar method of establishing popular governments. The constitutions of the American states have been mostly formulated by conventions and submitted to the people for adoption. Amendments to these fundamental laws in great numbers have been submitted to the vote of the people and adopted or rejected. The subjects dealt with have included not merely the framework of the government but many rules of substantive law. The principal new feature is in the initiative through which a law formulated by any citizen may be submitted to the voters for adoption on the petition of the required number of voters. Formulation of laws by persons who are not members of any legislative body is not at all uncommon, and many of the most carefully prepared acts are so prepared and afterward enacted into laws. The referendum is merely the submission of a law to the approval of the people as constitutions and amendments thereto are submitted.

5. CHANGES IN THE FORMS AND FUNCTIONS OF GOVERNMENTS

As we have seen there is a world-wide drift toward popular representation in government and away from the doctrine of the divine right of kings to rule. As popular influences gain ascendancy it would seem natural that military tendencies which have been such prolific breeders of despotisms should diminish. Nevertheless at no period in the history of the world was there anything to compare with the modern military and naval establishments of Europe or the expenditure of money in maintaining them. Modern inventions in the

manufacture of explosives, guns, steel and other metals, ship-building and the many costly structures and instruments of destruction and defense, seem to have caused the nations to run mad in a race of military organizations.

The claim had been that all this preparation was merely for purposes of defense but a situation of complete preparation for a conflict has borne its natural, perhaps inevitable, fruit, the most gigantic war the world has ever known. The leading nations of Europe have for many years borne a most excessive burden of taxation for military and naval expenditures. The perfection of Germany's army neither preserved the lives of its soldiers nor protected their families from the suffering that war entails. Great Britain's vast navy preserved its dominion over the sea to a limited degree, but at the expense of the lives of many of its sailors and marines. Air ships and submarines introduce new elements in warfare and have served to add to its savagery. Rules for the protection of non-combatants which had been observed in recent wars were disregarded because deemed impracticable where war is waged from the air and beneath the sea.

Notwithstanding this dreadful relapse into ancient savagery aided by so many modern inventions, the demand for some general organization of the nations of the world which will not merely prevent the recurrence of such conflict but which will relieve the people of all the nations from the burdens of great military and naval establishments is more widespread, general and persistent than at any time before in the history of the world. The danger of placing the power to set all Europe ablaze with war in the hands of a single ruler is apparent to all observers. Thousands of men are now earnestly seeking for some practicable plan which will secure the multitude against the mad ambitions, crimes and follies of crowned heads and military leaders.

In times past differences in race, language, religion and customs have interposed serious obstacles in the way of good understandings between nations. These obstacles are being measurably removed by intercommunication and education, but on the other hand modern facilities for travel and com-

munication bring the people of each country in contact with the people of all the others in greater or less degree. The most military nations are those that come most in contact with the others. In the dark ages China, Japan and India were completely isolated from the Europeans. Now the fleets of all nations sail into their ports, and railways connect them by land. England, France, Germany, Italy and Russia are reaching out for distant possessions, while Spain and Turkey have been forced to give up much of theirs. The savage tribes of Africa are being subdued by Europeans who covet their lands and products. All the earliest seats of civilization in Egypt, India, China and Babylonia are either already dominated or threatened by these aggressive nations. Military force is still employed for the extension of power, as it was in the days of Ramses, Darius, Alexander and Caesar. Savages are subdued by it, a relatively easy matter, and vast preparations of armies and navies are made to ward off and overawe other covetous military nations. A few centuries ago the wars of European nations were mostly due to claims of their rulers to sovereignty over neighboring territory, and with immediate neighbors. Now the conflicts are largely over distant possessions. Very modern examples of this are the wars of Russia with Japan over claims of dominion and privilege in northeastern Asia, and between Italy and Turkey over a part of northern Africa. The material as well as the moral advantages of a general agreement among all the aggressive nations to police the countries inhabited by savages and protect the people of all nations who see fit to go there for lawful purposes, have not yet overcome inherited military tendencies, national selfishness and the jealousies of the great powers. In theory the submission of this whole matter to a parliament of all the nations is simple, yet practical obstacles still prevent it. By war and the maintenance of armies and navies the interests and ambitions of a few are served, but the multitude always suffer from them. Militarism and despotism go hand in hand and are of course antagonistic to the welfare of the public. The guilt of provoking war usually lies in some ruler or leaders. The great multitudes pay

the penalties of their crimes and often enrich and glorify them for the misery they have inflicted. With the advancing enlightenment of the masses throughout the world these truths are gaining recognition and aggressive warfare is condemned, yet it is not common to fix criminal responsibility on the men who dictate national policies. The central idea of the union of the American states is applicable to a world wide union of the nations. Such a union calls merely for the superimposition over all nations of an agency made up of representatives of each for the promotion of the welfare of all, leaving the regulation of the internal affairs of each country to the home government of it. It implies, however, the acceptance by all nations of the representative principle and of the equality before the law of the people of all races and countries. It must be attended by such general education of the masses and intercommunication among them as are essential to a world-wide understanding of the principles of the union. The guarantee to the citizens of each state of all the privileges and immunities of all the other states is of prime importance in America, and would be so in a world union. North and South America are republican throughout and though Mexico and Central America still have military disorders they have accepted the principle of self-government. With the aid of a general union all their difficulties would doubtless be relieved. For a long time similar conditions existed in the South American states but they have substantially disappeared. The United States had its frightful civil war, but the principle of local self-government and of equality of rights among all the people was not impaired. The people of France and Switzerland are educated for such a union, and all the British, German, Scandinavian, lowland and related people, though retaining monarchical forms of government, are quite well prepared to enter into and maintain a general union. Not only these but the pacific races of China and India and the Japanese are amply qualified to join the great federation. The European states where religious domination still combines with military in government and the

Mohammedans might be found more intractable than others, though they cannot be said to be more warlike.

A parliament of the world would of necessity be based on the broadest toleration of local institutions, laws, beliefs and personal views in all non-essentials. It could only stand on an accepted theory of justice to and equality of legal right in all. All national robbery by military force would necessarily be condemned. It is not essential to the successful maintenance of such a union that the people of all countries should regulate their domestic affairs in the same manner. It is only necessary that they should be substantially agreed as to the principles governing international relations and in the sterilization of the military functions of government. Increased intercommunication, interchange of literature, trade, common enterprises, common language and common purposes tend to sympathy and good understanding. That all these influences are actively at work and are breaking down the barriers which have so long caused fear and suspicion where confidence and good will ought to prevail is manifest. Whenever the sublime ideal of universal brotherhood and mutual help among all people prevails there will be little difficulty in effecting a general union.

Among the Greeks and Romans law-making, military training, religion and the administration of justice were the public matters receiving most attention. At Sparta the young were educated by the state. Education of the boys meant military training and of the girls physical development; all primarily for the purpose of giving strength, courage, endurance and efficiency in war. In all the Greek and Roman cities religious observances were matters of state concern, and Rome had its *pontifex maximus* and its college of *pontifices*. Popular institutions necessarily imply public instruction in matters of public concern, and the Greeks and Romans disseminated knowledge of military affairs, religious observances and the principles of their governments and laws, through the discussions in their assemblies, writings open to public inspection and in many other ways. Instruction in language, mathematics, philosophy, science and art was given mainly in pri-

vate schools. In Asiatic and European despotisms legislation was merely an assertion of the will of the monarch, while custom afforded most of the rules governing the conduct of people in their private affairs. Military organization was the basis of the feudal system and continued to be the basis of the monarchical system which ensued, but both were closely allied with the great religious organization of which the Pope was the head, except as conflicting interests and ambitions caused dissensions. The functions of the kingly governments included military organization, collection and disbursement of the revenue, administration of the law, and the display, intrigue, amusements and debaucheries of the courts. Modern governments have added many new functions. The first and by far the most important of these is the dissemination of knowledge. Free schools maintained at public expense, affording instruction to all in all branches of learning from the primary to the university, and technical schools are now maintained by all the leading nations. At first the Greek and Roman languages and literature and theology filled a large part of the curriculum, but now there is a marked tendency to treat these as of minor concern and to give prominence to the sciences, to all knowledge that gives man mastery over the material world. Among the newly developed or greatly enlarged functions of government are:

1. Education which is no longer mere polish, but equipment with power and efficiency in all undertakings. The old theory that gentility is measured by elegant worthlessness and indolence, and that distinction must be based on war's savagery is being discarded and men are measured by the more just standard of the services they render to others. The great man now is he who does, invents, plans or directs something that contributes to the welfare—not the destruction—of the multitude. Young men are still trained and educated for war in great schools maintained by the nations as well as in military camps, but much of the instruction given in the military and naval academies is just as valuable preparation for civil as for military duties. These schools are relatively few in number when compared with the general systems of common schools

where all the children are taught the fundamentals. In the United States the expenditures of moneys raised by taxation for the maintenance of public schools are far in excess of those for any other public purpose and now exceed those for the current expenses of both the army and navy by \$150,000,000 a year. The European countries do not yet make so good a showing.

2. The post office conducted by the governments is essentially a newly developed function. Each established and well organized government in the world receives transmits and delivers letters, printed matter of all kinds and small packages not only for all its own people but also to and from all the people of all other civilized countries. All the nations join in the international postal union, and though the vast significance of it is seldom discussed, the world already has one general governmental agency performing a strictly useful and peaceful function. Next to the educational function this is far the most useful and valuable one performed by the governments, yet it is carried on with the maximum of efficiency at minimum cost for the service and with little or no expense to the taxpayers.

3. The telegraph and telephone service, which in the United States are conducted by corporations, are operated in Europe largely by the governments in connection with the postal service. While they are of great and growing importance, the expenditures connected with them are relatively small.

4. Construction and maintenance of roads by the government is not new. The Romans and ancient Peruvians were great road builders, and all civilized governments devote more or less attention to their highways. Some of these old roads were as well constructed as any modern ones constructed for similar use, but railroads have introduced an entirely new system of transporting persons and property. In some countries these are constructed and operated by the government, while in others they are owned and operated by private corporations under more or less governmental supervision. The construction of highways open to the use of the general public has always been regarded as a proper function of the gov-

ernment, but the traffic carried on over them was in private hands. As a railroad from its nature calls for unity of management, the transportation of persons and property over it must either be assumed by the government or left to some private or corporate organization. Highways of all kinds are required for the postal service, and a railroad operated by the government merely rounds out the service given through the highways and post office by adding the operation of trains over the road for the transportation of packages of all sizes and kinds and also of passengers. To what point the functions of governments will be extended along this line the future will answer. The railroad is necessarily more or less a monopoly, but is dependent on the intercourse and commercial transactions of people dwelling at a distance from each other for its support. Neither state nor national boundaries indicate natural termini for it or limitations of its usefulness. It becomes in time a firm bond of union between the people who use it. In spite of governmental hostility it steadily teaches unity of interest, mutual confidence and brotherly assistance, regardless of race or nationality.

5. Improvement and care of the waterways, rivers, harbors, lakes and seas, construction of canals, dikes, aqueducts, breakwaters, lighthouses, docks and other aids to traffic by water, while not new, are greatly enlarged functions of the government. The ancient Babylonian, Egyptian and Chinese governments constructed canals in aid of agriculture and commerce and gave much attention to the promotion of these industries. The superiority of their civilization was due to their peaceful activities. The changes in modern activities along these lines is due mainly to the use of steam as a motive power. The construction of railroads tends to diminish the need for canals as waterways, and steam pumps raise water for purposes of irrigation. Steamboats have brought all countries bordering on the seas into safe and easy communication with each other, where all the proper safeguards and conveniences are supplied along the coast. Such vast undertakings as the Suez and Panama canals are carried to completion quickly and without placing an appreciable burden

on the people of a nation of ninety million people. While great sums are still expended on fortifications to guard against hostile squadrons, vastly greater sums are expended on improvements designed to open and make safe the entry of friendly ships and people from every quarter of the globe. While other nations have not passed from a policy of rigid exclusion of all foreigners to one of most active intercourse like Japan, the trend in all nations is to extend a welcome to all as friends, and to use the powers of government to promote friendly intercourse with, rather than for the destruction or robbery of them.

6. Care for the unfortunate is now recognized as a duty of the organized public. Asylums and hospitals of all kinds are maintained for the care of the insane, diseased, imbecile and indigent. It is recognized as a duty of the state to take care of all who cannot care for themselves and have no kindred on whom they rightfully depend. These humane functions, which now call for large expenditures, are distinctly modern and are a public acceptance of one of the obligations of universal brotherhood. To these may be added the care for those who sail the seas, lakes and rivers, through life-saving crews and appliances, lights, buoys and forecasts of the weather. In harmony with the recognition of these duties toward the unfortunate has come a change in the attitude of the public toward the criminals. There is a well defined drift away, not merely from arbitrary and unjust executions and punishments, but from all vindictive punishments. It is seen by criminologists that the criminal is still a human being, entitled to the aid of the state in becoming a useful member of society, instead of an enemy to it. It is also perceived that society is measurably responsible for conditions that stimulate crime. It is now regarded as a proper function of the state to undertake the reformation of not only juvenile but adult criminals.

The divorce of church and state now so complete in the United States and some other countries is a most important and clear cut change in the functions and theory of government. The growing tendency in all the leading nations to deny all divine commission to govern, to withhold from the

church all support by taxation and all aid in procuring the observance of religious forms is very marked. When governments are established and maintained by the people for their own purposes, both military methods and religious sanctions are unnecessary. The secular power no longer requires the prop of the church to maintain arbitrary assumptions of authority, and no longer vouches for the truth of its doctrines, or compels the people to furnish it revenue. This divorcement is of profound importance in its moral influence. False claims of divine right to rule are no longer bolstered up by the teachings of the clergy, but the secular officers must look to the people for their authority and justify their conduct to them. They may and often do deceive the people as to their motives and the merits of their policies, but the very truth of the matter is open to inquiry, and all the churches are free to act as public censors. On the other side the truth of the claims of the clergy that they are commissioned to speak for the Divinity is no longer vouched for by the secular power but is for them to establish. Out of the darkness appears truth as the divine light and the only safe guide to be followed. The truth is, falsehood is not. The truth bears every test, falsehood may bear some but not all. No matter what the line of human inquiry, he who can follow the lines of truth knows that he gains strength step by step and that he gathers imperishable fruit as he goes. The words of kings and priests and the books they have written may be true, but they may also be mixed with and colored by falsehood. To proceed safely in scientific investigation there must be either mathematical demonstration or such multiplicity of tests as excludes the chances of error. All the people searching freely and eagerly for the true rules affecting their common welfare and true relations to each other can discover more of them than any select few.

It is clear that whatever changes in governmental forms and functions tend to eliminate the destructive and wasteful agencies and substitute productive and economical ones are desirable. It is clear that the elimination of hatred and malice from the impulses which actuate the governing force is

devoutly to be wished, and the propagation of universal kindness and good will stimulated in all ways. The field of possible improvement appears limitless, but we have entered on and are traveling over it at steadily accelerating speed. Many people are alarmed at the tendency to rapid changes in all popular governments. This is due to the experimental character of all governments, the infinite possibilities of improvements in them, rapid changes in internal and external conditions, and the application to public affairs of so many more minds actuated by diverse impulses and suggestions. It needs but a few of the many pages of history to show how great harm nations can do each other in bloody warfare. It is now equally apparent that no matter how near to or remote from each other they may be, all may profit from mutual aid. The possibilities of achievements through combined efforts to promote the general welfare appear limitless. Compared with them the building of a Panama canal is but as a holiday diversion for the amusement of the world.

MODERN EUROPEAN CONSTITUTIONS

As a result of the Great War the political map of Central and Eastern Europe has been changed in nearly all its parts, and new states with republican institutions have been formed out of the territories of the wrecked empires. Their division of governmental powers into legislative, executive and judicial is in substantial accord with the American plan, but in the provisions relating to the exercise of these powers the new constitutions accord more nearly with the older European ones. The two most important differences relate to the powers of the presidents and the systems of legislation. In America the president is vested with the executive power, the command of the army and navy, the power to appoint judicial, as well as subordinate executive, officers, and to veto laws passed by Congress. This veto is not absolute, but is subject to be overriden by Congress. Congress cannot interfere with the discharge of his functions or the pursuance of his policies within his constitutional sphere of action. The members of his cab-

inet are his advisers, appointed by and accountable to him. Congress has no authority over them, except through its legislative power.

In the European republics the powers of the presidents correspond more nearly to those of the kings in the limited monarchies than to those of the President of the United States. The ministry is vested with most of the powers exercised in America by the President and his cabinet and is accountable to the legislative body and holds office only during its pleasure. The dominant party or coalition dictates the composition of the ministry and may change it at will. It frequently happens in the United States that the political party opposed to that of the president dominates in one or both branches of Congress, and that legislation on subjects as to which the political parties are opposed is completely blocked until the situation is changed by the election of a new president or new members of one or both houses of Congress. No such situation can obtain in one of these European parliaments, for the ministry must always yield to its decision, and the president can act only through and with the concurrence of the ministers. Under the constitution of Germany the Reichstag, formed of delegates "chosen on the basis of universal, equal, direct and secret vote by all men and women over the age of 20" for a term of four years, is the chief branch of the legislative department of the government. The National Council, (Reichsrat), is made up of representatives of the German states, each state being entitled to at least one vote, and the larger states to one vote for each million of inhabitants. The Chancellor and ministers have the right to appear and be heard in either house and its committees, and at its call is required to appear before it. They may introduce projects of legislation in the Reichstag which have the assent of the National Council, and also those to which it does not assent, but must record the dissent of the Council. The National Council may also introduce projects disapproved by the Administration. Bills may also be originated by members of the Reichstag. In case of a disagreement between the two houses, the President may submit the law to a referendum vote. If he fails to do so, the Reichs-

tag may overrule the objections of the Council by a two-thirds vote. The decision of the Reichstag may be nullified by the people, if a majority of the qualified voters vote at the election.

In Poland the chief legislative body is the Sejm, composed of deputies chosen for terms of five years by all men and women over 21 years old. There is also a Senate elected by the Voyevodships, each of which is entitled to one-fourth of the number of its members of the Sejm. Bills passed by the Sejm must be submitted to the Senate and may be published as laws by the President, unless the Senate raises some objection to them within thirty days after they are presented to it. If the Senate proposes changes, the wording of the law is determined by an ordinary majority of 11/20 of those voting on the second vote of the Sejm. Unless a different rule is provided by some special provision of the constitution, the vote of an ordinary majority in the presence of at least one-third of the statutory number of deputies in the Sejm is sufficient for the passage of a bill. The same rule applies in the House of Deputies in Czecho-Slovakia.

In Czecho-Slovakia legislative authority is vested in the National Assembly, consisting of two houses, the Chamber of Deputies with 300 members and the Senate with 150. The qualification of voters is the same as in Poland.

In Europe the connection of the administrative branch of the government with the legislative is very close. The ministers, though appointed by the President, hold office at the pleasure of the most numerous and representative branch of the legislative body. They introduce bills and discuss them before committees and in the houses, and are at all times bound to attend when called on. Under the new constitutions of Germany, Poland and Czecho-Slovakia, as well as in England, the larger and more representative body may override the dissent of the upper house. The Reichstag, the Sejm, the Chamber of Deputies and the House of Commons may enact laws over the objections of the Reichsrat, the Senate or the House of Lords in the manner pointed out by the fundamental law. The new constitutions of the three states first named allow this to be done speedily, while in England long delay is entailed.

In the United States each house of Congress holds an absolute check on all legislation. The veto of the President is not final but makes necessary the subsequent passage by the votes of two-thirds in each house.

The constitution of the United States confers in express terms on each branch of the government the powers it is to exercise and explicitly forbids the assumption of certain others. It also prohibits the states from doing forbidden acts. All these new European constitutions are in many of their parts mere outlines and refer to statutes for the detailed provisions on the subjects. They lack the definiteness and conclusiveness of the American constitution. The ease with which they may be amended by the legislative power reduces all restrictions on legislative action to little more than a matter of procedure, in case it is deemed necessary to avoid them. The United States Congress is bound by all limitations of its powers. The courts will nullify its unauthorized acts, and it has no power to change the fundamental law. By a two-thirds vote of both houses amendments of it may be submitted, but before they become effective they must be ratified by three-fourths of the states. During the whole life of the Union only nineteen amendments have been adopted, neither of which has materially changed the structure of the government, though most of them are of great importance in the exercise of its powers.

To amend the constitution of Germany the presence of two-thirds the membership of the Reichstag and the vote of two-thirds of those present are required, and also a two-thirds vote of all those voting in the National Council. On a referendum to the people the assent of a majority of the qualified electors is required. In Poland the presence of only half of the members of each house and a two-thirds majority of these is required to change the constitution.

In framing their constitution the people of the United States deemed it of prime importance to guard against abuses of power by strict limitations of the powers of each department of the government, by making one branch a check on another, and by reserving ultimate sovereignty in the people. In Europe the ever-present fear of aggression from other nations

causes its republics and limited monarchies to cling to a form of government so constituted that it may act promptly in an emergency. For this purpose the most popular legislative body is given power to act in spite of the dissent of the more select house, and to choose and dismiss ministers and executive officers. Concentration of power, rather than strict limitations of it, is still the dominant principle in the organization of their republics, as it was in the old monarchies, though the government is now subject to popular control through the elections.

All these constitutions establish an independent judiciary, appointed for life in Germany and Czecho-Slovakia, and removable in Poland only by judicial decision. In Poland and Czecho-Slovakia the courts have no power to inquire into the validity of duly promulgated laws, though Czecho-Slovakia has a constitutional court to pass on the constitutionality of its laws. In Germany it appears to be within the power of the Supreme Court to decide constitutional questions. Under the German constitution the national government has exclusive right of legislation over foreign relations, colonial matters, state property, right of changing residence, military organization, coinage and customs, and the right to legislate on all other matters not strictly local to the states. The states may legislate on subjects as to which the national government makes no use of its right to legislate, except in regard to matters concerning which the power of the national government is exclusive. This disposition of legislative power differs radically from that in the United States. Here the powers of Congress are defined and limited, and all other powers are reserved to the states or to the people by the express provisions of the tenth amendment. In Poland and Czecho-Slovakia the national legislature has power over the whole field of laws, except that in Czecho-Slovakia Carpathian Russia has its own Diet with narrow powers of local legislation. In Germany every state must have a republican constitution. There is no such requirement in the other constitutions, because the countries are not made up of separate states having established governments. In Germany and Czecho-Slovakia provisions are made for a referendum vote on laws proposed, but there is no such provision in

the constitution of Poland. In Czecho-Slovakia a commission of 24 members, 16 elected by the House of Deputies and 8 by the Senate, has legislative powers during the intervals between the sessions of the Assembly.

Religious as well as personal liberty is guaranteed in all three of these constitutions, but in Poland the Roman Catholic is recognized as the religion of the "preponderant majority," and the relations of the church and state are to be determined by agreement with the Apostolic See, ratified by the Sejm. A system of public schools is provided for in each country, and attendance of elementary schools is compulsory in Germany and Poland. The German constitution contains a chapter of 15 articles devoted to "Economic Life," which, while recognizing private ownership of land and other property, opens the door for expropriation of "economic enterprises adapted for socialization." In this chapter much consideration is given to labor and Workers' Councils, which, meeting with representatives of the employers form District and National Economic Councils, are to be consulted and have the right to propose laws relating to social and economic subjects. A short article provides that the independent middle class, (the bourgeoisie), are to be favored in legislation. The constitution of Poland provides that labor is entitled to special protection, and that for cases of lack of work and disability social insurance shall provide in accordance with a statute to be enacted. The constitution of Czecho-Slovakia merely recognizes the right of association for improvement of conditions of employment and economic interests.

When the constitution of the United States was adopted the number of free men in the country, who could be classed as laborers, was too small to call for consideration. African slaves constituted the only recognized laboring class. Most other laborers worked in their own fields or shops. Germany has the greatest number of wage earners and devotes most attention to their interests in its fundamental law. In Russia the laboring class through their soviets have become the rulers and taken over the sources of the production of wealth. The peasantry, though far more numerous than the wage earners,

have not been able to organize by reason of their ignorance and lack of leadership. The educated middle class was too small to resist the labor organizations, and the soviets have "nationalized" their property. The present famine is due in large measure to the lack of incentive for individual effort to produce and save useful things. Unwillingness to labor in the common interest and eagerness to take the fruits of the labors of others have wrought their natural results. The production in the nation of the maximum quantity of useful things requires the maximum of effort by each citizen. This cannot be obtained without the incentive of self-interest, until the average man is as deeply concerned about the welfare of strangers as he is about that of himself and his immediate family.

The constitutions of all these countries are based on the principle of the overthrow of the old form of monarchical government based on military organization and the substitution in its place of a government of laws, assented to by the people. In Russia the laborers' soviets back their rulership with military force, and they maintain their mastery in accordance with the identical principle of the government of the Czar. The ostensible purpose of the soviets has been to destroy, not merely the autocracy, but also all aristocracy based on wealth, and to place all citizens on an equality, but the method adopted has placed a few leaders at the head of a great army with the usual results and the added evil of the destruction of industry and thrift. Military rulership, freed from the checks and restraints of well administered civil law, is tyranny, no matter by what name it may be called. The other constitutions above discussed manifest an earnest purpose to establish just relations between all the people and to promote the general welfare, but they were framed under conditions of fear and distrust of neighboring nations and under the shadow of an ever-threatening war cloud. A maximum of general prosperity is impossible, where so much of the energies of the people is expended in supplying the waste of war and of preparation for war.

It is manifest that the mere forms of the separate constitutions of the European states cannot guarantee the welfare of

the people. Until some form of general organization or some general understanding in which all the people have confidence is established, military organization and its attendant evils will persist, whatever name be given to the forms of government. Mutual confidence, coöperation and good will are the efficient remedies for the political and economic evils from which the people of Europe have suffered in the past and still continue to suffer. Popular governments make the interests of the multitude paramount and are far more likely to induce the desired changes of sentiment than despotisms representing the wishes of only a few ambitious men.

LAWS

METHODS OF ORIGINATING LAWS

The leading methods of originating laws may be placed in eight classes: First, the most universal is custom, through which laws arise from the activities and environments of the people and come to be observed as rules of conduct without formal agreement or promulgation by any body. Second, Parental authority, exercised first over the immediate family and then extended to posterity and over enlarged families. Third, Military power, through which a despotic ruler converts his will into law. Fourth, Oligarchic decrees promulgated by a dominant few. Fifth, Religious leaders, acting singly like Mohammed, or in combination like Moses and Aaron, or in representative bodies, and claiming divine sanction for their rules of conduct. Sixth, Representative bodies authorized to speak for the state and enact laws. Seventh, Direct action of the people in a general assembly of the mass, or by vote on a proposition submitted to them. Eighth, Decisions of courts and doctors of the law who are authorized to interpret the written law and called on to find a rule of decision where there is no written one.

The spirit of the law accords with the spirit of the maker of it, and the purpose to be accomplished by it is his, not that of those on whom it operates.

Laws come into existence through a combination of two or more of these methods, and in all the leading nations of the world there are survivals of laws which owe their origin to each of them.

PURPOSES OF LAWS AND MOTIVES PROMPTING THEIR ENACTMENT

I. *Punishment.*

The laws prescribing punishments have many aspects. The importance of them is very greatly overestimated by most people, though by no means inconsiderable. The sum total of wrongs inflicted through violations of the criminal law is very small in comparison with the sum total of wrongs inflicted in the name of law and with its sanction. This affords the anarchist his basis of reasoning, but does not justify his conclusions. Experience everywhere demonstrates the necessity for a public force to restrain those who will not voluntarily refrain from injuring others. To leave the injured party to right his own wrongs in his own way leads to a succession of reprisals and enduring feuds. The theory of our criminal law is that crime consists of acts detrimental to the public welfare and that all such are public offenses. There is, however, in the nature of things a well marked difference between those offenses that are merely against the state or its rulers and those that harm private citizens only.

Purely public offenses grade all the way from treason manifested in open warfare against those rightfully entrusted with the powers of government to mere failure to contribute revenue or comply with a rule of public order. Treason is almost invariably an outgrowth of a condition of social disorder, and the purpose of the perpetrators of it is usually to overcome the power of the men in authority, rather than to harm the general public. It is common in despotisms which fall into weak hands, and is usually punished arbitrarily in accordance with the will of the despot. Those condemned as traitors are usually merely the prominent men whose power and influence the despot fears. Executions may be military, as in the recent lamentable instances in Mexico, or under

judgments of courts organized to kill, like those employed by Henry VIII of England. They are mere manifestations of savagery in different forms. In well ordered states, where the government is one of which the people approve, treason is rare. It may, however, assume the form of civil war, as that of 1861 to 1865 in the United States in which millions participated in the crime. While the law might have been invoked to slaughter more victims after the struggle ended, the manifold advantages ensuing from the restoration of all to friendly relations are perfectly obvious. The despot seldom feels safe in acting on this principle. Most of the other offenses which are strictly public in their nature are connected with the army, navy, revenue, currency or public records. Many of the offenses relating to the public revenue have no moral turpitude except in the refusal to be bound by the law. In and of itself there is nothing morally wrong in bringing food or merchandise of any kind into one country from another. The evasion of an excise or other tax in order to supply one's family with the necessities of life evidences no moral turpitude. There is, however, connected with all these offenses a disregard of established laws deemed necessary for the general welfare.

Of offenses against private persons which affect the general public only by the shock to the feelings of others and their sense of security, there is the full list of wrongs which one may do to the person or property of another of such crude and obvious viciousness that all recognize the immorality of the acts. For such acts the laws of modern states no longer take eye for eye and tooth for tooth, but many of them still do take life for life. For most wrongs a fixed quantity of suffering is measured out for a given offense. More humane views concerning punishments are now spreading, and it is perceived that the criminal is still a human being entitled to help and sympathy. The offenses violative of property rights, though still given much consideration, are quite inconsequential in their general effects in every orderly state. The sum total of value of all property which changes hands as a result of theft, robbery, embezzlement, forgery and all other crimes

of similar character is relatively insignificant, and it is rare that great suffering results from it. Arson committed out of malice toward another or to defraud an insurer is by far the most prevalent and disastrous of all.

Let us measure against these and the other wrongs committed against the law and to the harm of others the wrongs which are committed with the aid of the law. By means of the law the government forces its citizens to leave their private callings, their homes and families and enter its service in the army or navy. It declares war against its neighboring nation and sends these men out to kill and be killed, wound and be wounded, destroy property and spread desolation over the land and throughout the homes. It takes the property of its own citizens and uses it to destroy the lives and property of the citizens of other countries. It murders the murderer and confines felons in dungeons where human hatred comes but human sympathy is wanting. It gives absolute dominion over the land to a part of the people and casts sick and starving tenants into the streets at the landlord's demand and recognizes his right to be harsh and cruel in the assertion of his dominion over the face of the earth. It takes food from the mouths of the poor and clothing from their backs through the taxation on the articles consumed. It lends its aid in multiform ways to the crafty and the lucky in gathering incomes from those for whom they have rendered no service, to be squandered in vain show and debauchery. The hard and merciless creditor is the favorite of the law. Every advantage that the crafty man can gain in accordance with the law, is carried to fruition by the law. It is the law that makes and fortifies all privilege and continuing injustice. How vastly more is secured to the favored few the world over through the unjust use of the law, than all that is taken by all the crimes against the law. Manifestly the best field of labor for all who seek the elimination of crime is in taking away the temptation and incentive to crime by doing away with the injustice which the law now sanctions. Poor men are no longer hanged for killing wild game and thereby in-

terfering with the savage sport of the idle gentry, because enlightened sentiment has caused the repeal of the laws that required it to be done. Boys are no longer hanged for stealing a shilling, but monstrous injustice still uses the law.

In primitive societies where the people are poor and substantially equal, offenses are few in number and punishments mainly limited to death, bodily maiming, chastisement or fines. Despots add a list of offenses relating to their personal security and power. In theocracies and governments combining a religious establishment with the civil power offenses against religion and the church are sometimes greatly multiplied. Fictitious crimes like heresy and witchcraft have been visited with frightful torture and death. The more complex the organization of society the greater the number of statutory offenses. In the United States Congress and the state legislatures go on defining new offenses year by year, as evils incident to changing conditions and relations of the members of society are brought to their attention. This multiplication of statutory crimes has a marked tendency to induce disregard of the law and laxity in the efforts of the officers to enforce it.

The lists of crimes against which penalties have been denounced and the severity of the punishments inflicted have been so varied at different periods of the world's history and in the different countries that it is difficult to trace anything approximating a steady evolution along either line. Punishments among the ancient Egyptians are said to have been generally mild, while at Babylon the barbarity of the *lex talionis* prevailed. China and India have exhibited mildness and barbarity according to the character of those in power at the time. In Europe as well as in America there now seems to be a well marked tendency to mitigate punishments. The most advanced illustrations of this tendency are in the treatment of juvenile offenders, who are now placed in schools for instruction and reformation rather than punishment, in indeterminate sentences holding out an inducement to earn liberty by good conduct, in the parole of prisoners to give them a chance to demonstrate their ability to abide by the

laws, in improved sanitary and moral conditions in prisons, and yet more important than all these in a growing tendency to search out the causes of crime and charge society itself with the conditions which induce the commission of it. In many states the death penalty is no longer inflicted. The state no longer compels an officer to take a life that cannot be restored. With ample wealth to provide places for confinement and restraint of those who lose either their reason or moral self-mastery, the apparent necessity for swift vengeance disappears. It is dawning on us that the offenses committed by those we have so long looked on as without the pale of human sympathy are but the natural offspring of the wrongs inflicted by the dominant forces in society on its weaker members. The lord, who excludes the would be tiller of the soil from his game preserve to starve, is the criminal, rather than the poacher whom in former times he caused to be hanged. The same principle applies to a long list of modern conditions exhibiting all grades of inhumanity on the part of the dominant members of society.

2. *Taxation*

The justification both in morals and in public expediency for taxation is that funds are needed to promote the general welfare. In fact however the taxing power is and always has been invoked largely for the purpose of favoring the few at the expense of the many. In the crude simple despotisms it takes the form of robbery, the despot merely taking what he wants by force. A step in advance is a levy of tribute on conquered people for the use of the conqueror and his followers. In more advanced states the purposes multiply, but always with a large element of personal or class favoritism both in the distribution of the proceeds and apportionment of the burden. The typical despot squanders his revenues on dissolute courtiers and pomp and display about his court. Taxation with him is sheer robbery of the industrious people to support the vices of the favorites. Tithes, offerings and other church exactions are similar in character and similarly used where the priesthood rule. The Romans became expert

tax-gatherers, and the republic was doomed when the tribute from the provinces produced a dominant dissolute class and paid legions to back the claim of military aspirants for power. Modern nations are able to and do collect far larger amounts of annual revenue than the ancients could because of the greatly increased returns from productive industries and the far greater volume of money and substitutes for it in circulation. The progress made in the art of tax-gathering is mainly along the lines of inventing methods of indirect taxation through which burdens are concealed from the tax-payers. Such methods are successfully employed in the forms of excise taxes on beer, wine, liquors, tobacco and other articles of domestic production, which are paid in the first instance by the producers and by them added to the price charged the dealers and consumers. Custom duties on imported merchandise are similarly collected from the importers who pass the taxes on to the consumers through added prices. In time the people become accustomed to the high prices of such commodities and pay them without general complaint. Capitation, income, inheritance and direct property taxes are open and understood. The amount of the payment being known the tax-payer promptly complains of the burden unless convinced of the necessity for it, but where it is concealed in the price of articles of consumption he ordinarily submits without protest, and does not know and therefore cannot show to what extent he has been wronged by his government. The collection of such taxes is facilitated by the necessities of the consumers on whom they ultimately fall, because they are made an incident to the buyer's wants. He goes to the market to feed and clothe his family and furnish his home. The taxes are added to the prices of his supplies. The fundamental principle of such taxes is vicious, because it adds burdens to want. It also has the further vicious effect of obstructing the natural course of trade and thereby giving artificial advantage to some to the detriment of the public. Manifestly the more just method is to distribute the public burdens according to strength and ability to bear them, to tax income instead of outgo, wealth not want. Manifestly the

method best calculated to insure rigid scrutiny of public expenditures and curb waste and extravagance is to present each taxpayer with a bill of the amount required of him.

In the United States the general rule is that the revenue required for schools, roads, bridges and other state and local purposes is raised by direct taxes levied on the property within the district. While there is sometimes waste and extravagance in these expenditures, the purposes are so universally approved that the people cheerfully bear them. The revenue of the general government however is mostly raised by the indirect methods above mentioned. The expenditures are such as might readily be foretold. Militarism takes the lion's share. The army and navy, which the nation got along without during its early period of weakness, now call for more and more as the need of them diminishes. As official positions become ornamental rather than useful, salaries are increased and useless offices multiplied. Multiplication of offices and extension of the functions of government follow a well marked law of governmental growth. This is well or ill according to the nature of the growth.

There is another method of raising revenue for public purposes of fundamentally different character from either of those above mentioned, namely by performing a business function from which an income is derived. The post office, public railroads, telegraphs, telephones, canals, irrigation plants, water-works, gas, electricity and like public service works are illustrations of this sort. The officers and employees who discharge these functions are, generally, what all public officers and employees should be, public servants returning a full equivalent in service to the public for their salaries. Their compensation, even though charged against the general treasury, is in fact collected from those served and in proportion to the benefit received by each. It may not be desirable, practicable or even possible to so distribute the functions of government that the officers discharging each function shall be able to show by returns from it that they have earned their salaries, but it certainly is well to apply the test of utility to each branch of the public service and weigh cost against benefits.

In many countries the wealth of the privileged classes is due mainly to the use of the taxing power to extort revenue from the industrious multitude. In all countries it is permitted and protected by a government maintained by taxes raised from the producers of wealth. The possibilities of controlling the accumulation of unwholesome aggregations of wealth and financial power by the apportionment of taxes and the uses made of the revenue are not generally perceived except by those who use the taxing power for their own aggrandisement, yet by this method alone almost any desirable result is possible. "The power to tax is the power to destroy." It may be used to destroy wholesale injustice as it has been to build it up. In many countries there has been at times wholesale confiscation of coveted accumulations of property, but no system of distributing public burdens so as to steadily and continually keep them bearing most heavily on those whose rapacity ought to be restrained has ever been maintained.

3. *Personal Status*

Laws fixing the personal status of individuals and classes of people have played a most important part in the history of the world. The primary simple division is into masters and slaves, of which all others are modifications. Prior to the rise of feudalism in Europe slavery had been recognized by the laws of every nation, except where caste worked out the same results. Human beings were property subject to purchase, sale and the laws of inheritance. Moses and Mohammed both sanctioned slavery. In India the laws of caste made masters of the twice-born classes and servants of the Sudras, who however were not chattels subject to sale. The Greeks and Romans enslaved prisoners of war and passed the status on by sale and inheritance. Prior to the time of Justinian the people of the Roman Empire were divided into four principal classes: citizens, persons having Latin rights corresponding in a general way locally to the rights of Roman citizens, freedmen with more or less restricted liberty and slaves. The basis of this division was quite different from that into the four

leading castes of India. In India it was based on religion, education and occupation, while in the Roman Empire it was based on a theory of property and political rights. The Indian system has proved the more enduring and difficult to disrupt. Feudalism displaced the Roman system by introducing a new theory of mastery through title to land. The owner of the soil by dictating the terms on which his tenants might live on the land could obtain all the fruits of mastery. More modern serfdom in Russia operated similarly. The capture by Europeans of ignorant African savages and importation of them into America caused the establishment of slavery in America long after its disappearance from Europe. It proved as terrible a scourge to the white masters in the United States as the enslavement of the Israelites did to the Egyptians. There is now a well defined consensus of opinion the world over that slavery is immoral and detrimental to the public welfare. Chattel slavery is therefore rapidly disappearing. There is also a general tendency to raise the political status of the poor classes.

4. *Family Relations*

The law governing the rights and duties of husband and wife toward each other has been throughout all time and the world over the law of the stronger. The weaker one who most needed the protection of the law is the one from whom its protection has been withdrawn. In Asia the wife is and always has been little less than a slave to her husband, and polygamy is allowed to further extend the mastery and gratify the propensities of the male law-givers. In ancient Rome wife and children were under the absolute power of the husband and father, but polygamy was not allowed and religion imposed many wholesome restrictions on the exercise of his power. In some rare instances savages have respected the rights of women, but the rule has been that the wife was practically a slave, and often a captive forced to become the wife of her captor. In spite of the law it has not infrequently happened that the wife, being the more capable of the two or the more resolute, has ruled the household, but on the other

hand the instances of most gross oppression have been distressingly common. Where the union is one of genuine affection the law is a matter of minor concern, for each voluntarily does all he can for the welfare of the other. Kansas and some other American states have reached in their laws the true conception of absolute equality of rights in the husband and wife in their children, their property and political rights. The mothers of the coming generation are deemed entitled to as much respect and consideration as the fathers. The laws of most of the American and European states however still maintain the mastery of the husband with more or less emphasis. In different countries and at different times marriage has meant anything from the capture or purchase of a wife from a master or father to a free and voluntary choice on the part of both. By some people in some countries property considerations are deemed controlling, while by others they are ignored and even deemed despicable as affecting the true basis of marriage. Polygamy though nowhere general, owing to the equality in numbers of males and females, is allowed in all Mohammedan countries and will continue so long as the Koran is the supreme law. In all Christian countries it is condemned. Polyandry though allowed in a few places is so rare that it is seldom mentioned. A world wide evil of great importance lies in celibacy and prostitution. As the virtuous marriage is the source of all virtue, prostitution is a never failing parent of vice. In no modern country is marriage made obligatory either by law or religious teachings. Ancient Peru affords the only instance of compulsory marriages at a stated age. If it be true that under the Peruvian system there was neither a pauper nor a prostitute, it is well worthy of study in this connection. Modern governments leave the question of marriage or celibacy entirely to the parties concerned. There are many and diverse laws relating to the forms of contracting marriages and some restrictions on the marriage of classes of persons who are deemed unfit, and of different classes with each other, but none designed to promote them.

The laws relating to divorce are quite as diverse as those

relating to marriage and range all the way from the right of the parties to separate at will to prohibition of an absolute divorce. In America and Europe a decree of a court for such cause as the law of the particular country deems sufficient is generally required. No other field of legislation is more perplexing or works out less satisfactory results. The effects of divorces on the children of the pair demand consideration, and some states now require that they be represented at the trial of a divorce case. The ill success of all divorce legislation seems to indicate that happiness in the homes must be secured in some other way, and that divorce is but a clumsy make-shift resorted to because the true remedy has not been discovered. The grand difficulty is that the whole subject of matrimonial relations is too delicate for the state to deal with. The God of Love alone can legislate wisely for it.

In most countries the father has been and still is the master of the children. In ancient Rome this mastery lasted through life and included the descendants in all degrees through the male lines and the wives of sons and son's sons. Patriarchal systems have prevailed in many Asiatic countries. In Europe and America the children are emancipated at an age variously fixed by the laws of the different countries, and in many states the law releases parents and children thereafter from all legal obligation toward each other. In America the spirit of migration is so active that the grown children soon leave the homes, and families are scattered far and wide. This effectually prevents the growth of extended patriarchal households like those so common in Asia and eastern Europe. While the right of parents to punish their minor children is recognized in all countries, the laws of the leading ones now prohibit cruelty to them. The father cannot lawfully put his child to death, maim or permanently injure it. Modern tendencies are toward a weakening of paternal authority and family ties. In this there is a mixture of good and ill. It tends to widen the bonds of sympathy among remote families and distant people, and to weaken them between members of the family. This sometimes results in neglect of duties to-

ward one another and especially toward aged parents. Perhaps this foreshadows a state of society in which kindness will be diffused, and the sense of kinship with and duty to others will extend beyond the family to all humanity.

5. *Land Laws*

What is title to land and whence does it come? My birthplace was the ancient hunting ground of the now extinct Eries. My father, who held title to our home, my mother, brothers and sisters with whom I dwelt in childhood have all passed away, but the hills and the valleys, the woods, meadows, pastures and streams are still substantially as they then were. The clay tablet on which a deed to a lot in Babylon was inscribed is dug up and deciphered by the antiquary, but grantor and grantee and the Babylonian kingdom have been no more than a reminiscence for thousands of years. One man held such tablets for many pieces while others occupied them as his tenants. Landlord and tenants soon gave back to the soil the substance of their lifeless bodies, which is now mixed with the other dirt of the wild waste where the great city stood. The tablets still endure, but neither confer nor take away rights. Nations rise, make laws by which they assume to grant perpetual titles to the face of the earth, fall and sink into oblivion, but the mountain and plain, hill and valley still drink in the sunlight and the rain and bring forth their annual verdure for whomsoever may come to them. What is ephemeral man that he claims perpetual dominion over the land on which he rests for a brief period and then withers and decays like the grass or drifts away like the passing cloud? What is the lesson of it all? The earth is for the living. The dead merely return their bodies to it.

Men have made land laws on many diverse theories. A tribe of American Indians occupied a district as a common hunting ground. Some of them cultivated little patches of it and took their produce. In time a superior force came and drove them away. None of them had thought of permanent ownership of any of it. Pastoral tribes in the Eastern Hemisphere grazed their herds where grass grew and had property

in them but not in the land. Families and tribes settled down and tilled the soil, recognizing a common title in all the people of the village. Where land was abundant each used so much as he pleased. When increase of numbers imposed limitations on the claims of each the community made assignments from time to time as changing conditions dictated. Possession protected by the public force suggested the idea of continuing right of possession and use. Temporary absence in war or on business suggested right to possession on return and to the products during absence. Temporary occupancy by another established the relation of landlord and tenant, and the sum paid by the tenant for the privilege of occupancy suggests the power and advantage to be derived by using the public force to maintain the dominion of the absent landlord. It is then soon perceived that with the conversion of the right of possession into the right to dictate terms of possession to others for an indefinite period in the future a scheme of mastery capable of extension over many tenants may be evolved. The landlord then may have harvests from fields he has not sown and receive service for which he makes no return of service. The right to dominate a part of the face of the earth without occupancy being fully established and extended by the law of wills and inheritance the complex system of land tenure which prevails in Europe and America developed. Regulation of the occupancy of land in a densely peopled country is imperative and naturally and necessarily devolves on the law-making power. The Romans treated land as a vendible commodity and placed it in the same class with slaves and work animals required for its tillage. Unrestricted right of purchase and sale always results in the concentration of title to land in the hands of the few, and this tendency was well illustrated at Rome and throughout the empire. The laws compiled by Justinian dealt mainly with title to slaves, land and other property, and the transfer and perpetuation of property rights by sale, will and inheritance. The feudal system differentiated land titles from other forms of property rights and based its theory of political power on a modified scheme of title to land. It was then perceived that

the ownership of slaves was unnecessary, that title to land in effect gave ownership of those who must live on it, and that full dominion over the land could be made to mean full personal and political dominion over all the people who dwelt on it. The king then became lord paramount, holding the ultimate title to the soil of his kingdom, which he parcelled out among his vassals and their dependents according to circumstances. The feudal system gave way in turn to the commercial view of land titles which had preceded it, and land again became subject to bargain and sale. There are still survivals of the ancient village systems of common tenure without individual right of sale and of various modifications of it, and of some of the incidents of feudal tenure, but subject to such restrictions as local laws impose, perpetual dominion over land may now be bought and sold in most of Europe.

In the United States the government has claimed the ultimate title to all the land which had not become private property before the establishment of the government, subject only to the possessory rights of the Indian tribes. The Indian titles have been acquired by treaties from time to time. Through the acquisition of political sovereignty over the territories and the Indian rights the United States became possessed of a vast area of fertile land. In the early days some of this was sold in large tracts, but later the quantity allowed to one purchaser was restricted to 160 acres of ordinary land. Later the right to acquire title at all was limited to actual settlers to whom the land was given outright after five years occupancy and improvement. The area of good available agricultural land now owned by the government is very small and no longer affords accommodations for the multitude. While the quantity of land which a settler could acquire from the United States has been thus restricted, the title conveyed has been full and absolute, and no restrictions have been placed on transfers to purchasers after completion of the settler's title. It has followed naturally that a large part of the settlers have sold their homesteads soon after perfecting their titles and fallen back into the ranks of tenants. The process

of consolidating the holdings in the hands of speculators and investor goes on quite rapidly, and is counteracted only by the laws of inheritance and willingness to take profits out of sales. The tendency for titles to pass into the hands of the few is very marked. The theory of the title conveyed by a patent from the government is that it is full and absolute in the patentee, his heirs and assigns to the end of time, and that it carries with it all beneath to the center of the earth and all above to the stars; subject only to the taxing power and the exercise of eminent domain for public uses. This gives a legal basis for the worst form of land monopoly. The owner may use the land or not at will, absolutely exclude all occupants or dictate the terms of tenancy. The courts, backed by the whole power of the state will enforce his rights, no matter how oppressively exercised. No person may become a tenant except on the landlord's terms. So long as government land was open to every settler farmers had a more or less available alternative, but now the outlet is substantially closed and the landlord's extortion is only limited by the steadily diminishing difficulty in obtaining tenants. Whoever has surplus income may extend his holdings of land according to his means, and the landless are confronted with advancing prices and diminishing net incomes. The theory of absolute title regardless of use encourages speculation in unoccupied farm lands and vacant town property, through which many great fortunes are made by those who merely obstruct settlement until their cupidity is satisfied. The profits realized from such investments are merely sums extorted from those who ultimately use the land. The speculator renders no service as an equivalent for his profits, and does nothing in connection with his dealings for which he merits a reward. No theory of land tenure more vicious in principle has ever obtained in any country. The dual system of state and national sovereignty renders it exceptionally difficult to deal with land monopoly in a thorough and comprehensive manner. Though the laws are as favorable to the concentration of land in the hands of the few as were those of ancient Rome before the republic gave way to the military

despotism, there is still a great middle class which may protect itself from conversion into a vast illiterate, debased proletariat, such as Rome then had. Title to the face of the earth vested in the few enables them to condition the existence of the many, but title is wholly dependent on artificial human law and its oppressive use on the aid of the public force. Political power is here vested in the multitude, and they have it in their power at all times to change the law and abolish land monopoly. Every family requires a home. Home is the citadel of all virtues and good influences. Probably the most efficient step that could be taken toward the prevention of crime and the social evil would be to provide every family with a home of its own. Homestead entry of government land is now available only to the very few and will soon cease entirely, unless title is reclaimed from private owners. Exemption of homesteads from forced sale for the payment of debts does not give homes to those who have none. All the theories of the law are theories of mastery for the landowner and dependence on the part of the landless. Many young men do not marry because they are not able to provide homes, and young women cannot marry till husbands are available. The ancient Peruvian government solved these problems. This proves that it is not only possible but practicable to assign to each family a share of the face of the earth. The broad question which every state must answer by its laws is, shall one part of the people be dependent on another for an abiding place on the earth? The answer now given is yes. Is this the answer that accords with justice and sound public policy?

6. *Inheritance*

One of the leading causes of the destruction of democracies has been rules of inheritance. It was long an unsolved puzzle to the writer, why so many cities of Europe had started as democracies, been converted into oligarchies and then subjugated by despotisms. Illustrations of this round can be found in great number among the free cities of Greece, Italy, Germany and Russia. Notwithstanding the patent fact, that

as free democracies they were far more vigorous and prosperous than after their institutions were changed, there seemed to be a fatality that doomed every democracy to destruction and that foreordained the succession of a tyrant. Having always held firm faith in the final triumph of that which is morally best, it was hard to understand why what seemed both a less just and less efficient form of social organization persistently supplanted a better one. The secret lies in the unjust rule of the transmission of property by inheritance, coupled with the theory of absolute title to land. On these most legal tyranny is based. The practical operation of laws of inheritance is easily traced. In the first generation the most crafty and energetic gain the largest shares of wealth. The indolent and improvident remain poor. In the next generation some inheritances are dissipated by improvident heirs, others are preserved and increased. Intermarriages occur mainly between those of the same class, and fortunes are thus consolidated. In the course of time a few great estates absorb the whole landed property, and much of the movable as well, and the society is divided into the few rich and the many poor. So long as officials are chosen by vote of the whole, the more wealthy and prominent men are usually elected. Elections then become either a mere matter of form or are dispensed with. The few families, which have the property, have also the political power. Sometimes, as at Venice, a close corporation is formed, which rigidly excludes all new aspirants for political influence. When this stage is reached decay sets in. The ruling class seek enjoyment of their riches rather than the public good. The great multitude struggle along in ignorance and poverty. The law of natural selection of leaders in business and state affairs is stifled. In and in breeding causes physical and mental decay in the ruling class. Experience everywhere shows that the strongest and brightest men come quite as frequently from the poorer classes as from the wealthy, but where both the management of properties and the direction of public affairs are denied them, the state loses their natural force. Thus it happens that the public get neither the benefit

of the natural strength of the few rich or the many poor. The energies of the rich are deadened by affluence and easy living, and those of the poor by want and ignorance.

The maximum of energy can only be maintained by starting the members of each generation on a substantially equal footing, and requiring each individual to demonstrate his ability to make good use of wealth and power before entrusting him with it. The law of inheritance passes the wealth and power of the father to the son, no matter how weak, immoral or unfit he may be to use it. A rule of primogeniture accentuates the evil. The law which executes the will of the testator, as a general proposition, merely substitutes a private rule of inheritance for the public law. In practical operation it works out substantially the same results and passes the property to one or more favored members of the donors family, and in case of a failure of issue supplies the want by selecting some favorite from without the family.

Nowhere are the effects of the laws of inheritance more clearly shown than in the city of New York, where all the landed property has already been concentrated into the hands of about six per cent of the families, leaving the other ninety-four per cent as their tenants. Most of the great estates have passed down from generation to generation from the early Dutch settlers. The great wealth of most of the proudest families is due to no merit of the present owners, and they live in unearned luxury, while performing no useful function for the public. It is fundamentally wrong and wholly unjust to start six per cent of the children born in New York as the owners of all of it, and the other ninety-four per cent as subject to whatever terms the six per cent may impose for living on the island. Justice demands of the state that it give to each member of each generation fair treatment. This implies education and a portion of the face of the earth. Nothing is more firmly rooted in the prejudices of the people than the rules of inheritance and the power to make testamentary disposition of property, yet no other legal rules work out either so much injustice or so many public disadvantages.

The greatest force to laws of inheritance is found in India,

where not only the property of the ancestor passes to the heir, but also his social status and occupation. The extreme rigidity of this system has been often remarked, but the fact that it has its basis in a theory of inheritance and is but another harmful application of it seems to be generally overlooked. Hindoo law makes most minute provisions for the transmission of property by descent. The law of caste separates the people of one generation into classes and then passes that division down from generation to generation. That it is contrary to nature is abundantly demonstrated by the numerous violations of it, which have resulted in the production of so many sub-castes. In its operations it is far more arbitrary and restrictive of personal liberty than any despotism of a single ruler can possibly be, for it places the individual in a vice where he cannot move to better his condition. It tends to idleness when conditions are unfavorable to the inherited calling, to inordinate pride among the highest castes and extreme servility among the lowest. It stifles spontaneity of individual effort, because of the limitations imposed on the right of an individual to select his own calling and to follow a variety of occupations. Trade guilds and labor unions are extremely mild in their dictations to their members when compared with the Indian castes. The enforcement of these restrictions is not dependent on a ruler or on the whole body of government officials. Not only the Brahmans and the military caste, but all the castes and the whole weight of religious influence, education and public sentiment unite in enforcing this most harmful system. So completely are all the people imbued with devotion to the plan of their social organization, that to attempt a reform is to oppose the whole mass, yet the whole scheme is dependent on a purely artificial law of inheritance, which is neither founded on sound morals or expediency.

As with the laws recognizing slavery, men cling to rules of inheritance with great tenacity, because they give advantages to those of most influence. The poor and ignorant fail to grasp their effects. In the southern states the poor whites, who suffered almost as much from slavery as the slaves them-

selves, took great pride in their superiority as freemen, and, when the war came, went out and fought for slavery under the guise of states rights. The poor and landless now generally believe in the land and inheritance laws.

Novels, which are read far more than any other class of books, often picture the hero or the heroine as finally rewarded for suffering and tribulation with an estate from some relative. The popular fancy still calls for unearned wealth. Fair compensation for services rendered, added to a fair share of the natural wealth of the earth and the accumulations of past generations, fails to satisfy. The average man or woman wants a great gift from fortune, rather than justice.

The ancient Peruvians appear to have been the only people who had a just conception of the relation of the state to its people in regard to inheritances, but there was much to condemn in their system. The state assigned to each newly married pair a home, and also distributed among its people a share of the products of the flocks, herds, mines and fisheries. All took their patrimonies, not from their ancestors, but from the state as the common father of all. The Inca however took an inordinate share for his household, and, worst of all, there was no room for the exercise of the inventive genius of the people. All were tied down by a rigid system, which they could neither change nor break away from. The idea however of the state as the heir of all deceased persons, bound to assign to each child its share of all the estates, is one that the people of the most advanced nations may well consider. In no other manner can full justice be done to each generation. In no other way can the full strength and energy of each individual in the race of life be as surely called out as by giving to each an equal start in a fair field. Natural selection then takes place; the strongest and ablest lead, and the weak and sluggish follow. This is the natural law. The artificial rules of land titles enduring after death, and of inheritance of property, deaden the energies of the so-called fortunate heirs of wealth by removing the necessity for effort, and lessen the efficiency of the children of the poor by depriving them of the means to do with.

In all ages and in every country the maximum of all virtues is found among the middle class, who are above immediate want and yet under the necessity of exercising industry and economy. Public policy requires that each member of society should perform a useful part and render service in return for all services received. Inherited wealth enables the heir to receive service and return none. The state thus loses the benefit of the work the heir should have done and, what is often of far more consequence, the labor expended in wasteful extravagance. The services of the great retinue of servants, maintained by some people of great wealth merely to minister to their personal vanity, are wholly wasted and usually give no real enjoyment to the master. The healthy, enjoyable life must always be the life of useful activities, in the benefits of which others share. The evil influences, which great inheritances have on the heirs, begin usually as soon as the child is taught to expect the estate, and that labor to earn a subsistence will be unnecessary. They end only with death. Where a great estate falls to an infant of tender years, the title is vested in an owner incapable of managing it, where it vests in a profligate, it is wasted in riotous living. In practice any system that would meet general approval would doubtless leave the home in the possession of the family of the deceased owner. It is probable that it would also leave to them the farm of limited size, the work shop, the store, or other place of business of limited value and necessary for earning a livelihood, where there is a member of the family able to use it.

The radical change, which would seem desirable, is one cutting off the transmission of great estates to unworthy hands, and placing them in the hands of the public for distribution in such manner as will best promote the general welfare. Like all other radical changes of system, it can only be effected when the public demand it. The imposition of inheritance taxes is a timid start toward the curtailment of great inheritances.

7. Contracts

The law of contracts necessarily extends over the whole field of commercial transactions, industrial relations and in-

vestments. Its subject matter includes the land and all that grows upon or lies beneath it, all movable things and all the artificial and intangible forms of property and assurances of benefits that men devise. In the most advanced states, living persons are no longer subjects of bargain and sale but contracts for their services grow in number and variety. Slavery having been abolished, every person of full age and sound mind except married women is theoretically free to buy and sell whatever he can and make all sorts of contracts for service from or to others. For their protection minors are shielded from improvident contracts made prior to an age arbitrarily fixed in most countries at twenty-one years. In many of the American states married women now have substantially the same right to make contracts and acquire property that men have.

Freedom of contract is of the very essence of liberty. There can be no doubt that the modern increase in industrial and commercial activities is largely due to increased freedom of contract and of occupation. The abolition of slavery in the southern states instead of ruining their industries ultimately stimulated them. Service under contract gives better results than slave service. The abolition of serfdom in Russia has resulted similarly. The modern tendency everywhere is to take away restrictions on the right of the poor to change locations and masters. There is also a general tendency to throw off restrictions on the purchase and sale of land and on the importation and exportation of products from one nation to another. It is perceived that full advantage of natural conditions can only be taken by allowing the shifting of population according to needs and conditions and the production in each place of the commodities for which the climatic conditions and natural facilities best adapt it.

There is no difficulty in making the law in terms confer full liberty to make contracts, but to secure by legislation fairness and equality in dictating their provisions involves endless complications. There is full liberty in many states to negotiate contracts concerning land, but no approximation to equality of control over their terms. Ownership of land is

monopolistic in its nature. Even where the law imposes no restrictions on dealings in land, the competition of sellers in the market is limited to the particular tracts that the owners are willing to sell. All the rest is withdrawn from the market. If the competition between buyers were limited to landless ones, the situation would not be so unfavorable to them, but the fact is that great landowners are often the most persistent land-buyers. Those who derive large incomes from rents affording them a surplus for investment often use it to increase their holdings. The tenant of farming land is not a formidable competitor of his landlord in the land market. The landlord is usually in a position to prevent him from having any surplus income to invest. In many countries the law interposes artificial obstacles in the way of the landless purchaser.

The advantage of the land-owner in making contracts relating to the use of his own land is even more marked. People multiply, but the land area neither multiplies nor stretches. All must have abiding places. Every newcomer requires a part of that which is already the private property of another. He can use it only on the terms imposed by the owner. If a tenant increases the fertility of the land he tills or otherwise improves it, the landlord may increase his rent accordingly. In a city the more costly the buildings erected by a tenant the higher the ground rent. These advantages held by the land-owner are wholly unearned and unmerited and due solely to the system of land monopoly sanctioned by the law.

The same principle of monopoly applies also in the labor market. Agricultural laborers can find employment only from the farmers. The supply of land is strictly limited, and the owners may determine absolutely what work shall be done on it. The number of laborers may fluctuate, but whether few or many all must accept the terms offered or starve, so far as this line of employment is concerned. The monopoly of labor applies more acutely where great numbers of operatives are dependent on a single mill, mine, factory or other industry and must accept the terms offered by the employer or migrate to another place. Not merely the rate of wages but

the conditions of service are dictated by the employer, except as the employees are able to approximate equality of position through combination and dealing as a unit. Some semblance of a monopoly of the supply of labor for certain lines of work is sometimes effected through labor unions, but the need of wages on the part of the laborer is ordinarily far more urgent than the need for help on the part of the employer, and the closest combination falls short of giving equality of position in most cases. There are cases of the ruin of employers by strikes of the laborers. Industrial warfare is of the nature of war, wasteful and destructive to all engaged in it. The relation of the law to the parties to such contests is more remote than in those relating to land. The law does not directly confer the advantage, but it is often due to superior capacity exhibited in building up the employer's business. Most great enterprises however are now carried on under corporate charters granted by the state. The strength of the company arises from the law which authorizes the combination of capital and energy under a single head. This in its inception is a combination of interests and naturally suggests and leads to further combinations and consolidations resulting in great manufacturing, trading, mining and transportation monopolies, many of which are able to dictate, not merely terms of employment to their laborers, but also the terms of their contracts with all others with whom they deal as buyers, sellers, carriers or bailees. These artificial entities being dependent on the law for their existence are subject to visitation by the law-making power for the correction of whatever abuses of their privileges they may be guilty.

In many instances laws are passed for the avowed purpose of aiding one party to a class of contracts. As we have seen, in the reign of Elizabeth of England favorites were enriched by grants of trade monopolies enforced by the government. Many modern nations give the domestic producers of certain classes of commodities advantages in the home markets by means of protective tariffs imposing burdens on international competition. The tax levied on the imported foreign product

is imposed rather to shut out competition by the foreign producer than to raise revenue for the government. To stimulate inventive genius inventors are given monopolies of their inventions for limited periods. Buyers must accept their terms of sale till the patent expires, but at the end the public gets the full benefit of the invention. Similar encouragement is given to authors and artists.

Added to these are less easily classified enforceable contracts made under conditions of mastery and dictation of one over another. The courts refuse to enforce contracts made under compulsion, but legal duress falls far short of including all cases in which the strong and crafty overawe or overreach the weak and confiding. Having shielded minors, insane and imbecile persons from improvident contracts, it was long deemed sound public policy to require each person to protect his own interests in his dealings and to enforce whatever agreements the parties make in lawful transactions. Modern legislatures have come to take cognizance of some of these positions of advantage, especially on the part of employers and to avoid such terms as are designed to shield them from reasonable care for the health, safety and morality of their operatives.

The law of most countries requires some formal requisites for certain classes of contracts. What is termed the Statute of Frauds and Perjuries requires contracts for the sale of lands and various other classes of contracts to be in writing and signed by the party to be charged thereunder, and is very generally in force in English-speaking countries. The Common Law recognizes differences in the legal force of different forms of written contracts, ranging all the way from the absolute conclusiveness of judgments of courts and public records of certain kinds to the mere *prima facie* disputable evidence of a receipt for money. Requirements of written evidence of contracts and promises are based on distrust of oral testimony and human memory. Written instruments have the advantage of unfailing memory, and in the process of reducing an agreement to writing it becomes necessary to make its terms clear and definite so that they can be accur-

ately stated. The statute is designed mainly to protect against certain classes of promises unless they are in writing. Like all rigid rules relating to human dealings it works injustice in many cases, yet seems to be regarded with general favor. The Roman law and the Civil Codes of France and Germany make different classifications and prescribe different formalities, but make requirements based on the same reasoning.

Contracts for the payment of money, made in the form of negotiable paper, play an important part in the business world. The rule cutting off all defenses to such contracts in the hands of bona fide holders for value without notice of such defenses seems reasonable and necessary for the protection of those who take such paper in lieu of money in commercial dealings, but when applied to promissory notes bought as an investment often aids swindlers working in combination to enforce the payment of notes fraudulently obtained for no good consideration.

While it is a long established rule of jurisprudence throughout Europe and America that the law will not enforce immoral contracts, the standard of morality recognized by the courts has not always been an exalted one. In commercial dealings there is ordinarily an element of chance for gain or loss that cannot be measured accurately, and some merchants grow rich while others lose their little capital. Dealings in the stock markets and on boards of trade appear in form to be similar to the business of the merchants, but the purchase and sale of stocks, grain and provision for future delivery, although in form legitimate commercial contracts, are largely mere bets on the rise and fall of prices in the markets. Dishonest combinations of speculators to cause abnormal fluctuations of prices are natural attendants of such operations, and many of the modern abnormal accumulations of wealth come from such dealings. Under the new German Code such contracts are void. The discovery and production of mineral wealth is in its nature speculative and uncertain, and dealings in mines and mining shares are necessarily uncertain ventures. Only through combinations sufficiently large to give a general average of results can there be a fair distribution of

profits and losses and the ruin of some and the enrichment of others avoided. This principle of distributing burdens and sharing benefits is well illustrated by contracts of insurance of life and property, which in form appear very much like wagers at great odds that a person will not die or a house will not burn within a given period, yet are in fact quite scientific methods of distributing and equalizing the burdens of disaster and the waste caused by the elements. The wrongs perpetrated through unfair and immoral contracts which the law-makers deal with now are similar to those encountered in the past, but as human relations grow in complexity the difficulties attending the enforcement of fundamental moral principles increase. It is easy to declare in terms that the public force shall not be used to aid the extortioner, the gambler or the immoral operator in his schemes, but it is not easy to determine just where and to what extent elements of extortion, gambling and immorality have entered into human dealings, to afford full relief from their evil consequences and still allow the measure of liberty necessary for healthy business activity.

The suppression of lotteries and gambling houses, the requirement of publicity of the financial condition of banking, railroad and other corporations, the regulation of the charges of public service corporations, provisions for the safety and health of employees and efforts to prevent monopolistic combinations, evidence a growing appreciation of the application of higher moral standards to the law of contracts. Some European governments still profit from the vices of lotteries and gambling houses which they license, but in the United States the effort is to suppress them.

For the enforcement of contracts of every kind and character the parties are dependent on the law, the courts and the public force. Shall the state give effect to those having any taint of unfairness or immorality? The answer to the question cannot be a clear and unqualified negative because of the difficulty in applying nice moral tests. Legislatures and courts can at the best undertake to make only a fair approximation by general rules to the enforcement of moral stand-

ards. Those who profit largely from unfair conditions and unjust laws are in all countries in positions of more or less advantage to influence government action, and the powerful are seldom wedded to the most exalted conceptions of right. If they were so they would regard their unearned wealth as a trust held for the use of others. So long as the great multitude remain ignorant and illiterate oppression and wrong flourish, but with the general diffusion of knowledge and the extension of representative government law-makers and courts are brought to see more of every side of public questions and to feel impulses from the weak and destitute as well as from the rich and powerful, and the law of contracts becomes imbued with more of the spirit of justice.

8. *Combinations*

This is the age of private combinations. A very good test of the stage of civilization which a people have reached is the number, extent and purposes of the voluntary combinations they form. No great undertaking can be carried forward without combination and concert of action of many people working toward a common end. The most potent incentive to great combinations has usually been war, and the form military. All great military leaders have excelled in capacity for organization and direction of the operations of great numbers working with a common purpose. The saying "in time of peace prepare for war" expresses the necessity for the employment of peaceful activities as prerequisite to war-like ones. Among savages bows, arrows and other crude weapons must be made and an understanding reached as to the men who are to use them and the time and manner of attack or defense. As civilization advanced it was soon perceived that continuance of the struggle depended not merely on numbers of men and supplies of arms but also of food and clothing. Granaries had to be filled, clothing made and transportation of supplies provided for. To facilitate military operations the Romans and Peruvians became great road and bridge builders. The Greeks and Phoenicians gave more attention to their boats, and the Persians and Hindoos to horses,

chariots and elephants. The invention of gunpowder made necessary not merely its manufacture but a long chain of industrial activities for the production from iron ore of guns and the construction of carriages and attendant equipments. With the use of costly weapons and soldiers trained to use them comes the necessity for a burden of taxation to defray the expenses, involving a peaceful organization to extort money for war and its incidents. As new forms of high explosives have been invented it has been rendered necessary to strengthen the forms and fibre of the guns and add costly machinery to handle them. Warships must be large enough to bear ponderous armament and be shielded with armor plate to resist the shots of like guns. A long chain of industries extending from the iron and coal mines through the furnaces, foundries and mills to the forts, arsenals and ships is now maintained to fill the demands of modern armaments. Food, clothing, hospital equipments and supplies and all the paraphernalia of camp and battleship must be produced and stored to await the contingency of unrestrained national greed or hatred. The one great useful lesson that war teaches is the value of combined effort to a common end. Courage, devotion to duty, patriotism and all the other virtues of the private soldier meet disaster if efficient combination and concert of action is wanting. But the purpose of all this long chain of preparation is death and destruction. The possession of a great armament excites distrust and arouses enmity. Lasting peace and security is and always must be dependent on mutual confidence and good will. For two men to arm for conflict with each other manifestly has no tendency to promote neighborly conduct or good will. The tendency of national armaments is the same. Why not substitute activities designed to promote good understandings and mutual confidence for these hateful ones? Both consciously and unconsciously the substitution is being made. The inventions that vivify have far outstripped those that destroy. By the use of high explosives a cannon ball may work havoc twenty miles away, but peaceful communication leading to good understanding and mutual help may be had almost instantly between people on opposite

sides of the globe. While forts are built to protect seaports against hostile attacks, lights and buoys to safely guide friendly commerce, breakwaters to shield against storms, piers and docks to afford safe and easy landings are constructed to welcome all who come on peaceful missions. Torpedoes are sometimes placed in channels and harbors for the destruction of the warships of enemies, but vastly greater effort is expended in removing rocks and reefs and deepening and widening channels to make safe the entry and exit of merchant ships. The ancient Chinese Empire was shielded from hostile attacks by the great unexplored ocean on the east, the Himalayas, Kuen-Lun and Thian-Shan mountains on the south and west and they built the great wall to complete the circuit of their defenses. Thus isolated they developed their unique civilization uncontaminated from without, except when the Tartar hordes broke through the barriers and established their rulership over them. Japan produced its busy millions in isolation from the distant west. Foreign warships and soldiers have come to these peaceful people in this age of intercourse and taught them their superiority in the art of destruction. But foreigners have also brought ship loads of unheard of inventions and useful things, knowledge of natural laws, of the material world, of the processes of nature, of medicine, sciences and arts of which they knew little or nothing, and have opened distant markets for their peculiar products. Though the destructive agencies excite fear and distrust, the peaceful influences induce friendships. Combinations are formed for the exchange of products and to gain mutual benefits through which the bonds of confidence steadily gain strength. The dark cold visage of the foreign destroyer changes to light and warmth, and the "foreign devil" is transformed into a delightful friend. No people can now live in complete isolation. The advantages flowing from the interchange of products are sufficient to induce the merchants to transport commodities between the most distant lands. Each nation has dealings with many or all others, and it has become necessary to have agreements as to the rights and privileges which the people of one country will be accorded

in another. These agreements are put in the form of treaties which rest on the good faith of the parties for enforcement. A breach of one of them may occasion war between the parties, but war leads only to another treaty. While there are treaties to which several nations are parties, the general situation is one of separate treaties by each nation with each other one, all dependent on good faith and voluntary compliance except as one party may be able to enforce its demands, right or wrong, by superior force. A general agreement to submit all questions arising under treaties or otherwise between nations to impartial arbitration is seen to be the next great forward stride in the march of civilization, and the logical culmination of governmental combination. The long list of separate treaties is a modern product, nothing similar having been possible in ancient times.

The walls, canals and temples of Babylon and China evidence great combination of effort for common ends; the walls for protection; the canals for communication and water supplies, and the temples for religious rites, all tending to security and comfort for the people. The great pyramids of Egypt prove a like combination of effort, but apparently designed only for the gratification of kingly pride. These combinations were under despotic domination. Modern military and naval combinations partake of the despotic character of all things military and of necessity are made by the national governments. The folly, the wickedness of it all has been freely discussed by representatives of the nations in the Hague conferences, and the inherent savagery of war has been condemned in whole and in each of its particulars, but the bonds of interest and of good will between people whose ancestors have fought and killed each other throughout all times past are not yet sufficiently strong to inspire general confidence. The task of making them so is being performed by private and quasi-public agencies and by indirection more certainly than by open advocacy. America's settlement shows the difference in potency of moral and immoral combinations and enterprises. The conquests of the rich and civilized countries of Mexico and Peru by the Spaniards were military. The

purpose was to rob the natives of their gold and silver, with which the conquerors were dazzled. Gunpowder and steel were more potent than the primitive arms of the natives, but they merely wrought destruction. No bond of sympathy was established between conquerors and conquered, and there was no thought of building up continuing industries for mutual benefit. The robbers carried away booty after destroying many useful structures built by the natives. Conquest meant desolation. The settlers of North America also sought gains, and the charters granted the colonists reserved for the British crown a share of the gold and silver to be mined, but the savages knew nothing of gold or silver and the mines were far from the regions settled. To gain profits it was necessary to combine for the production of useful things. Robbery and destruction offered no rewards but the uncultivated land. The inception of the settlements was by parties organized to come across the ocean in ship loads and take possession of the country. Scattered settlements near the coast struggled to produce from the earth means of subsistence. In time their products attracted traders and slowly at first, but with increasing strength, agriculture, trade and then manufactures were developed. The first settlers worked mainly in separate families and small groups, but with a constant and growing appreciation of the advantages of mutual help and concert of action. Self-reliance, inventive genius and capacity for adapting means to ends have been the well marked characteristics of the European settlers of North America, and these have produced a greater variety of private combinations to do useful things than have been formed in any other part of the world. Contemporaneously with the settlement of America the nations of Western Europe, at first more especially the Dutch and British, organized shipping and trading companies in great number. The French, Portuguese, Spaniards and Scandinavians followed in similar lines. The discovery of America was soon followed by the discovery of the other unknown regions. The sea was a great highway, open to all adventurers, and by it every distant shore could be reached by those having a suitable ship. The romantic and incredible

tales told by Marco Polo of the wealth of the east were verified, and Europeans sought out the coveted products of the orient.

Inventive genius has had much to do in shaping modern private combinations. The invention of printing aided greatly in spreading information concerning distant lands and people, but did not at once occasion any great organization for gathering and distributing information. Now press and news associations are world wide, and the educational influences of the published reports of the doings and sayings of people in all parts of the earth are the most potent and far-reaching of all in breaking down the barriers of prejudice and distrust. The work of the types and presses is dependent for its efficiency on a multitude of ancillary inventions. The paper used requires great mills and paper companies and multitudes of laborers to convert forests into paper. The manufacture of printing presses is itself a great industry, and the perfection of those on which the great dailies are printed has involved a multitude of inventions of mechanical devices which take the place of human hands and bring forth with marvelous speed and perfection the story of a day's doings. The efficiency of the news-gathering and distributing agencies is dependent on still other great inventions and combinations furnishing the facilities. The discovery of the methods of inducing, conducting and breaking currents of electricity gives us the telegraph, telephone and other facilities for the rapid transmission of messages. To use these a network of wires spreads over the land and cables across the seas. The wireless waves are projected through the air from towers, caught up far away and interpreted. A perfect understanding by each operator of the work of the others is essential to the use of these inventions. Combinations are formed which act as carriers of information, and on these the press and the public depend for the transmission of the news to be printed. These combinations are public in some countries and private in others, but all work in concert in the conveyance of news. Newspapers and periodicals having been printed the publishers and the public are dependent on another great organization, the

post office, for transmission and delivery to the readers. Some falsehood and some malice find expression in these publications, and it necessarily results that their influence is sometimes evil, but this is exceptional. The general purpose of the press the world over is to ascertain and publish the truth, expose error and falsehood and promote human welfare. So doing it leads the march of civilization. To the types and presses we are also indebted for the crystalization of accumulated knowledge in the form of books. Educational institutions whose mission it is to disseminate knowledge and strengthen mental processes are mainly dependent on books for the principles they teach. Here again we meet a great chain of combinations working together for the elevation of humanity and the promotion of peace on earth and good will to men. Science is truth. Mathematical science is demonstrable truth from which errors may be certainly eliminated. Other sciences admit of more or less approximation to absolute certainty. Back of the preparation of books are investigators working singly or in combinations according to the nature of the investigation. Great compilations like the encyclopedias require the work of specialists in many lines and a large fund to defray the expense. The barriers which formerly prevented the utilization of the learning of alien people have been measurably removed by interpreters, and the literary and philosophical treasures so long concealed in the hieroglyphics of the Egyptians, the cuneiform characters of the Babylonians, the Sanskrit and the Chinese writings, are now available to students. The great universities perform the double service of bringing together natives of all countries to be taught the same truths and instructing in all languages. The translation and publication of the sacred books of the various religions afford a chance for comparison of them and lead to the rejection of the palpable falsehoods and better appreciation of their moral beauties. Manifestly truth will bear every test and alone has divine sanction. No matter what the field of study one may be sure of divine sanction of his conclusions if he has found the truth, and may also safely reject palpable falsehood, no matter where or how it is

written or asserted. Modern methods of investigation lead toward the overthrow of all false theories of the right of man to rule his fellows, and of all false claims of knowledge of the Infinite and special commission to represent and speak for the Deity. All truth-tellers speak for him in the truths they utter. All else is imposture. Educational influences tending to mutual understanding and concert of action among men are not confined to the schools and products of the printing presses. Every combination to produce useful things or perform beneficial services teaches a practical lesson of common brotherhood.

The railroad company may perhaps be singled out as the most advanced type of modern business combination, exhibiting some evils and injustices, but withal a most potent educator and promoter of good will. To bring the physical property into being some combine their capital to pay for land, materials, labor and equipment, and become the stock and bond holders of the corporation, while others in greater numbers combine their labors in the construction of the roadway, buildings and rolling stock. As the physical property comes into being it is turned over to an operating organization requiring great specialization of training and duties. Office men, track men, shop men, yard men and train men must each and all work in concert for the accomplishment of the general purposes of transportation and with due regard for the safety of each other, of the traveling public, of those on and about the line of road and of the property entrusted for transportation. Here the duty of man to his fellow man and full responsibility for the welfare of others finds most ample recognition. The traveler enters the car, sits in comfort, goes to bed, sleeps, wakes in the morning, dresses, eats, visits with his fellow passengers or reads as his inclination moves him, in confident reliance on the vigilance of all whose duty it is to provide for his safety and comfort and carry him to his destination. The self-sacrificing devotion of train men to duty is proverbial and exhibitions of it hardly excite notice. Engineers, firemen, brakemen and conductors sacrifice their own lives to save those for whose safety they are responsible.

Lines of railroad are arteries along which the pulsations of human life flow, and the attendant telegraphs and telephones are the nerves of sensation and motion. The intermingling of distant people on the trains, going to and leaving them, steadily tends to knowledge of each other, sympathy and good understanding. Railroad, steamboat and telegraph lines now connect all countries more or less directly with each other. In some countries the railroads and telegraphs are owned by the governments, while in others they are the property of combinations of private persons, often including citizens of several countries. War interferes with their normal business operations, and usually results in the destruction of more or less of the property. While a navy may be employed to protect a merchant marine and an army to protect a railroad, the commerce of the world has outgrown such a system of protection. It demands the protection of good will. Mutual interest and business arrangements between those connected with and using any line of transportation are usually the only protection needed, except as resort to the courts becomes necessary at times.

Besides the transportation companies there are numberless trading, manufacturing, mining, insurance, benevolent and religious organizations formed in one country and operating in another, or composed of citizens of both that bind by mutual interest or bring alien people into sympathy by personal contact. It is not so much through the propagation of particular doctrines as by the establishment of common interests and personal friendships that progress is made toward the recognition of universal brotherhood. Tornadoes, floods and famines in distant lands become the concern of good people everywhere, and aid in disaster is extended merely because the sufferers are human. Voluntary private insurance companies undertaken with a view to gaining profits by the collection of premiums in excess of the risks incurred now have to compete with mutual companies that merely distribute the burdens of losses among the policyholders on an equitable basis.

Manufacturing, mining, banking and trading companies in

endless variety, ranging in size all the way from a few co-workers with little capital to such a gigantic combination as the United States Steel Corporation with its capitalization of nearly a billion and a half and its great army of employees, have been organized and extend their operations according to their means, purposes and abilities to a few or many people, to near neighbors only or to the most remote foreign countries. The influence of the large combinations tends generally to the promotion of good understanding and friendly relations between distant people. The evil influences incident to them arise mainly from monopoly or attempted monopoly, strife with competitors and oppression of dependents. It is through combinations of such kinds that most modern exotic fortunes have been acquired, often by more or less immoral methods. It is also through them that the most oppressive use is made of the power of wealth. The lavish expenditures of some multimillionaire bond and stockholders contrast unpleasantly with the penury and privation of some of the operatives. But the fact of most profound significance is that these are combinations to produce things or perform services beneficial to mankind. The owners and managers may receive far too great rewards for the services they render and operatives be underpaid, but whatever either of them gets comes as a result of useful, not harmful, activities. The gains of robbers and pirates are losses to others, but the gains of those engaged in useful activities are not necessarily the losses of anybody, and ordinarily are attended with corresponding gains to those with whom they deal. Viewed as a whole in their relations to society such combinations are moral and highly beneficial. They lead mankind along many peaceful paths to rich fields where great harvests are gathered for the general good. The policy of modern enlightened nations is to encourage such combinations. Despotism and theocracy usually fear them, but free people need only to curb and eliminate their injustices. These arise, 1. from the corrupting influence exerted on the governments; 2. from the frauds of promoters who secure stocks, bonds and privileges without just compensation through relations of trust and

confidence; 3. inordinate profits gained through monopoly; 4. inordinate compensation to the few managers; 5. inadequate compensation to the many dependent workers; 6. disregard of the health and safety of employees; 7. disregard of the rights of the general public.

The representative of a great corporation, like the ancient courtier, diligently cultivates the acquaintance of all entrusted with power to aid or injure it, fawns, flatters and corrupts. Neither executive, legislative or judicial officers are exempt from his attentions. Unmerited advantages are sought and often obtained by immoral methods. Corporate franchises and privileges come only from governmental sources. It is necessary that lawful purposes and needs of corporations be made known to all the governmental agencies that deal with them, and for this purpose they must have representation. There is little danger from influences exercised openly. The private conferences and close associations for undisclosed purposes are most dangerous. Corporate abuses are all subject to correction by the sovereign power.

The first great change in governmental policy with reference to corporations in the United States was in prohibiting special charters and providing for their organization under general laws. Corporate entity may now be obtained as a matter of right instead of special favor. The whole field is open for corporate competition and secure monopolies can no longer be obtained through special charters. Legislatures are relieved from the corrupting influences attending applications for them. The problem of establishing justice between men is now complicated in many ways and simplified in others by corporate organizations. In its dealings with the outside public it is treated as a unit and may be restrained and regulated as may be found necessary for the general welfare. Many laws have been passed requiring statements at intervals of the operations and financial condition of various classes of corporations to be used as a basis for protection against fraud, the abuse of corporate powers and unreasonable exactions by public service corporations. Important governmental agencies have been established with supervisory pow-

ers over certain classes of corporations. In the United States national banks are supervised by the Comptroller of the Currency and state banks by state officers. The charges and operations of carriers engaged in interstate commerce are subject to substantial control by the Interstate Commerce Commission, and intrastate traffic by like commissions in many of the states. Insurance companies are inspected, their solvency determined and charges and dealings regulated by commissioners or other officers with like powers in the states. Recent legislation recognizes and enforces the duty of employers to provide for the health and safety of their employees, and bear some of the pecuniary loss resulting to them and their families from accidents in the service. Some corporations make provision for pensioning their superannuated servants.

Great combinations force on us more full and careful consideration of the relations of man to his fellows. The duty to care for the welfare of others is being more and more perceived and comprehended, and the Deity is being exonerated from the charge of visiting poverty and suffering on the multitude and wealth and satiety on the few. It is becoming apparent that the poverty and suffering with which the world is filled are avoidable and mainly due to human pride, hatred, malice, indolence, waste, ignorance and injustice, not to divine wrath or caprice, which are mythical false attributes of the Deity. Many potent modern influences are tending to the elimination of these evils. Governments have assumed the function of educating the young, and now expend vast sums to remove the ignorance and credulity which formerly afforded favorable conditions for the assertions of false claims to power and privilege. It is found that the strength and efficiency of a just government is greatly promoted by the general diffusion of knowledge. Though wars still devastate parts of the earth, people are learning the inherent vice and immorality of them. National duels are seen to have no better basis in morals than private duels, which the laws of civilized countries now condemn. Murders, robberies and crimes of all kinds are still committed, but it is now becoming ap-

parent that prevention of the causes of crime is better than punishment of criminals. Many organizations have recently been formed to promote the judicial settlement of international disputes and thereby relieve statesmen from any apparent necessity for plunging nations into wholesale crime. Other organizations are seeking the causes of crime and how it may be avoided and eliminated. All these deal with the complicated relations of men to each other and the human combinations which impel to war and crime. The criminal is no longer looked on as a monster from without the pale of human fellowship, but as an unfortunate who requires help and discipline to bring him to observe just relations with his fellows. A fundamental error in the teachings of the Code of Manu lies in the doctrine that moral perfection may be gained by solitary abstraction, overlooking the impossibility of severing the bonds which bind man to man, and the fact that the great field of the moral law is the field of human relations one with others.

The good and evil inhering in business combinations are similar to that in the social relations of private persons. Mutual help, kindness and good will are the vivifying, up-building and uplifting forces, while strife, hatred and malice are destructive in their tendencies. Competition and rivalry are not necessarily harmful, but if merely manifestations of effort to excel are highly beneficial. But immorality akin to that of war often attends the use of the power of strong corporations as well as that of strong nations. Men holding a majority of the stock sometimes use their power to ruin the holders of the minority of it. The whole force of the governing body of the corporation may be used to oppress employees, to ruin competitors, to unjustly favor one customer or ruin another, or to wrong all with whom it has dealings. To correct these evils it is not necessary to destroy the useful combination, but only to compel the men who direct its activities to desist from vicious practices. Moral qualities are primarily personal, though a corporation may acquire a reputation for moral character by steady adherence through all its agencies to just dealings, but if it follows vicious methods

it is the men who direct its affairs who are guilty and should be brought to account rather than the soulless corporate entity. A fine assessed against the corporation punishes the innocent equally with the guilty stockholder.

Combination tends to unity of purpose, and unity of the overruling power throughout the universe is the most sublime conception of which the human mind is capable. It is axiomatic that this unity is moral and that all natural laws are moral, for the test of morality is accordance with the law of the Supreme Intelligence. All combinations, all governments and all human laws should be framed and used to induce the people to know and obey the unchanging principles of the moral law. The infant must accept the instruction and obey the commands of its parents because they have superior knowledge and power. The parent must learn and obey the public law, because it expresses the sovereign will and is sanctioned by the public force. Officers, agents and employees of a great corporation must study and obey its by-laws, for they express the corporate will and are enforced by it. The corporation itself is the mere creature of the public law, and its by-laws, rules and regulations are valid only so far as they accord with the public law. But the public law reaches no farther than the national boundary. No nation can legislate for another, or for the great broad oceans. The rules that have been evolved and enforced are local and temporary, affecting a limited number of people and only so long as they are sanctioned by the dominant force. International law is customary law based on the more or less generally accepted customs of nations, but it lacks the sanction of a superior force to compel observance of it. In the autocratic government the ruler is accountable to no earthly power, and the limited monarch is shorn of power rather than subject to discipline. In popular governments all who use the public force are accountable for their conduct to the people for whom they are authorized to act. Progress in the science of government means progress in enforcing the observance of law by those entrusted with authority more than by those under them. Progress in the formulation of public law calls for

the formulation and acceptance of just rules applicable to nations and people the world over, superior to and binding on rulers and leaders by whatever titles they may be called as well as on the subjects of all nations. Restraint of the conduct of the private citizen, though sometimes necessary, is exceptional, but restraint of those entrusted with great power must be constantly operative. The most prevalent error in reasoning on the needs and purposes of government is based on the assumption that the great multitude of the poor need constant surveillance and repression. The greater need and greater difficulty everywhere and under all forms of government is to curb the dominant elements, restrain their rapacity and amend the rules they have caused to be promulgated as law through which they repeal the moral law of mutuality of service and give to the crafty drones the honey gathered by the workers.

The mixture of good and evil in private combinations is similar to that in public ones. Charters, by-laws and rules governing the apportionment of duties and the distribution of rewards are mainly the work of the few who hold positions of advantage and profit most largely by them. The necessity for such rewards for intelligent direction, skill, energy and devotion to the common purpose as are essential to efficiency is not to be overlooked: nor does it accord with either sound morality or expediency to wholly relieve sloth, inefficiency and wastefulness from the privations and hardships nature imposes for them. All governments are combinations of men, the best to promote the general welfare, the worst to gratify the rulers. All laws are rules of conduct, of right or of privilege, sanctioned by the state and applicable to some or all its people. Of these also the best promote the general welfare and the worst gratify some and harm the rest. The unnumbered ages of isolated development of diverse systems are past and the time for comparison, selection of the good, elimination of the bad and combined effort to promote the general welfare of the whole human race has arrived.

The primary combination made necessary by the Creator as a condition to the perpetuation of the human race is the

family. Union of the male and female may be brief and imperfect or life long and complete. Children may have the imperfect care of a mother only or the best that both parents can give. The love between the pair may be sensual and selfish or pure and self-denying. Every grade and shade of the good and ill in human life finds expression in the family, and the happiness of its members is measured by the love for and devotion to each other manifested by all the members of the household. The principles applicable to the household apply to every combination of human beings from the family to the great family of nations, the whole human family. Love for all humanity, including strangers and aliens of all races, though necessarily ideal and abstract, is yet the very heart and life of all that is good in religion and philosophy. The perfect conception of it cannot be given detailed expression in human laws, because it is too ethereal either for formulation in words or enforcement by officials, yet it is a touchstone by which all forms of combination and all rules of conduct may be tested. Every approach to it conduces to human happiness, every departure from it to suffering. Absolute perfection of conduct and relations is not to be found in any household, but very delightful approximations to it give perennial comfort and much unalloyed happiness to the best families everywhere. Constant approximation in the relations of strangers to each other to such as prevail within the families is foreshadowed by the march of civilization. The multiplication and extension of combinations of all kinds, public and private, furnish a physical basis for and stimulate the growth of nerves of sympathy that could not exist between people isolated from each other. In every great combination, public or private, the task of greatest importance and difficulty is to rule the ruler, judge the judge and lead the leader. Acts classed and punished as crimes are each the separate work of one person or a few confederates. The importance of the sum total of them is magnified by the detailed narratives of so many similar atrocities. Wholesale crimes perpetrated in the conflicts of nations and by great combinations of men and wholesale injustice corre-

sponding to great numbers of continuing crimes are chargeable to the men who administer the governments or direct the combinations or to the laws.

THE NECESSITY FOR AND VALUE OF HUMAN LAWS

Various definitions of law have been given. The old one, that it is a command from a ruler to his subjects, is fairly accurate for an unlimited despotism, but not for republics. The modern idea of law seems to be, a rule of conduct or of right recognized by the supreme power in the state or combination of states as having binding force.

The Universe and all things in it, animate and inanimate, are governed by natural laws. Human beings, as well as the lower orders of creation, are subject to them, and cannot either individually or collectively free themselves from their rewards and punishments, however wise they may deem themselves. Human laws, however, are dependent on human sanctions for their enforcement. The freedom of action, with which the Creator has endowed man, imposes on him the duty of regulating his own conduct and adjusting his relations with his fellow men. The rules he formulates for these purposes should accord with natural law in all respects, but the field to be covered in order that harmony may prevail in all the varied human activities is so vast, and human perception of the application of natural laws so imperfect, that the law-making powers undertake to cover by their own enactments the whole field of human conduct and relations, and to impose penalties for the violation of such of their rules as they deem proper, even where natural laws are clearly discernible. The crude despot, like Hammurabi, inflicts savage penalties, impaling and other horrible deaths, maiming and the *lex talionis*, for infractons of the moral law or of the king's commands. The field covered is limited, and the execution of the law is harsh and summary. In the great modern commercial nations the penal code is far less conspicuous, and the law-making bodies in popular governments deal with all the multifarious relations and combinations that are formed to carry on the activities of modern civilization.

Love and sympathy on occasion call forth heroic acts and the sacrifice of self for others, but the driving force of sheer selfishness appears to be the most reliable motive power in the industrial and commercial world. It is not to be utterly decried or condemned. Manifestly the law of nature imposes primarily on each person the duty of providing for himself and those immediately dependent on him. If every one were endowed with strength and ability to do so fully, there would be little or no difficulty in solving all economic problems and declaring the law applicable to them. But in the modern civilized state there is no such thing as self-sufficiency. Each person is dependent on a multitude of others, and self-interest impels him to take part in one or more enterprises for his income and to rely on others for his supplies. The numberless conflicts of interest arising between different persons taking part in or affected by various businesses and enterprises render fixed rules establishing the rights and regulating the duties of each a necessity. These are necessary to set limits to the demands of the over-selfish and protect the weak from the strong and crafty. They are yet more necessary in order that each may understand the part he is to perform and all work in harmony. The infinite complications and antagonisms which arise afford the basis for the vast mass of law which the people are required to observe and the courts to enforce. Opinions differ widely as to the fairness and justness of the distribution of the burdens and benefits of the common undertakings in which so large a part of the people now take part, but there seems no room for difference of opinion as to the necessity for these combinations of effort, or for rules fixing the relations and determining the rights of each person connected with them. Order is Heaven's first law, and law established, understood and followed is the bond that holds the industrial world together and makes its achievements possible. The destitution now prevailing in soviet Russia is a most striking illustration of the effects of attempting to suddenly eliminate self-interest and substitute common interest in its place. Selfishness has not been eliminated but transformed from an invigorating, productive force to a blasting and destructive

one. Peasants will not raise food merely for the good of others, while living in destitution, and industries will not prosper without supervision of owners whose welfare depends on the successful operation of them.

The transfer of the title to the land and all industrial property from the private producers of useful things to the general public has the effect of taking the products of industry out of the control of the producers and into that of the persons who exercise the powers of government. These persons are ordinarily actuated by the same order of selfish motives, whether called a soviet or an aggregation of courtiers under a Czar. Private selfishness has the merit of tending to promote the production and preservation of the necessities of life and other useful things. The selfishness of a ruling class or organization seldom does better than to cause them to be seized and squandered. The sublime altruistic conceptions of the communists start with a basis of wealth already created and aim at equal distribution of it. They ignore or condemn the natural impulses and acquired capacities which stimulate the production and preservation of it. The socialist would have public management and regulation of all productive activities and of the distribution of their products, thus necessitating the complete reorganization of society and remodelling of the laws. The anarchist, profoundly impressed by the many injustices resulting from existing systems, would condemn and discard human government and leave all to the consequences nature would impose on unrestrained liberty. But the experiences of the race in all countries and in all ages has demonstrated over and over again the need of concert of action among men, and the necessity for rules of conduct and of right in order to secure and maintain it. The test of the civilization attained by any people is the comprehensiveness and justice of their laws and the extent to which they are observed and enforced.

VOLUNTARY OBSERVANCE AND GOVERNMENTAL ENFORCEMENT OF LAWS.

In primitive societies, where rules of conduct are established by custom only, establishment and observance of the rules are

contemporaneous. There can be no custom without observance of it. But, when laws are instituted by a governing power, they are observed or not according as the general sentiment of the people accords with or opposes them, or the governing force applies adequate means to compel obedience to them. Customs, more or less generally observed, obtain in all countries and in all ages. Where governmental organization is rudimentary or wholly wanting, they fill the whole field of law, and in the most advanced states the laws most highly regarded and generally observed are either founded on or in close accordance with established customs. Customs relating to dress and personal adornment are very strong and enduring among savage tribes, and in the most advanced states unknown leaders of fashion dictate quickly changing styles of dress. Religious customs often cover the whole field of laws of conduct and of right in primitive societies and are potent in the most highly organized nations. What we term fashion imposes personal discomfort, and in some savage societies hideous disfigurements in great variety, and enforces its requirements by its own peculiar sanctions. Ear, nose and lip rings, blocks and weights distort and make hideous, heavy brass rings as collars and ornaments for the legs and arms burden and distress people so advanced in civilization as the Burmese, and the civilization and philosophy of the Chinese has failed to drive out the barbarous custom of binding the feet and thereby making cripples of young girls. Many fashions equally absurd, if not so vicious in their consequences, come and go in America and Europe. The sanctions through which fashion enforces its commands are hope of admiration, or at least of approval, by other followers of the fashion, and fear of their contempt and ridicule for ignoring them.

Customs, maintained through many centuries, have furnished the Ifugaos a complete code of laws governing not merely domestic and social relations, but the title to and tenure of the exceedingly valuable lands and irrigated terraces constructed by unnumbered generations of their ancestors, as well as of their chattels. Self-help in accordance with established customs affords the only means for the enforcement of these rights.

Custom dictated the knightly code of the dark ages and its more modern successor, the code duello. It has induced and perpetuated gross immoralities of many kinds from time to time, as well as provided many rules of great value in preserving the race and promoting the general welfare. Its life is dependent on consensus of opinion and harmony of action, and these are always and everywhere of great importance in all human affairs. The field of its operation in full force is usually limited to homogeneous people, speaking the same language. Rules of general application between people remote from each other either in race or place of habitation are usually imposed by some law-making power having general authority over them.

The methods through which lawgivers obtain obedience to the laws they promulgate include education, persuasion, fear, force and punishments, exerted separately or in combination. The differences in the methods employed are distinguishing characteristics of the various forms of government. The most complete and enduring observance of laws has been obtained through education combined with religious hopes and fears, inculcated by an established priesthood charged with the duty of instructing the young. This is the Asiatic method. The Code of Manu, which is preëminent in this respect, has been taught by the Brahmans through all the centuries since its promulgation. They are at the same time teachers of the youths and priests who inculcate religious doctrines and conduct all religious ceremonies. With them religion and law are one and are taught at the same time and in the same manner. The sons of the three higher castes are carefully instructed in the principles of the Code and sacred books, but the Sudras, the servant caste, are denied all instruction except that it is their duty to obey and serve the "twice-born" castes. The fundamental doctrine of the duty of self-control and strict observance of the law as absolutely essential to the growth and welfare of the human soul at all times and under all circumstances, leaves no room for vicarious atonement or an easy road to bliss. Every Brahman must climb the heights by his own efforts, aided only by the sacred teachings. Mohamme-

dans have not divided their people into classes, though recognizing the institution of slavery, but they have followed the same method of teaching their laws through the instrumentality of the priesthood and with strong religious sanctions. Their success in perpetuating their law has been very marked. This method has the very great advantage of inducing general knowledge and observance of the law, but it also has the very serious disadvantage of perpetuating all its defects and closing the door to reforms and additions needed to meet progress in science and social organization and new conditions as they arise. The Chinese have not depended so much on religious sanction for the enforcement of their laws, but have inculcated a respect for Confucius and other great sages and for ancestral teachings, that in large measure takes its place. In time the consensus of belief in the wisdom of ancient teachings has come very near to religious faith. It is of the very essence of laws promulgated as divine commands, that they brook no inquiry into either their authenticity or their justice and truth. Teachers must start instruction in them with unqualified assertion of their divine origin and the conclusive force of all their doctrines. This shuts the door at once to that most valuable part of education, which induces the exercise of the reasoning powers of the student in testing the value and application of his lesson to what he knows of the world he lives in. The only questioning allowed of religious teachings is as to the precise meaning of the texts of the religious books. Such questionings produce religious sects without undermining the faith of the multitude in their truth, for all conflicting views are based on the absolute truth and wisdom of what is written in the book.

The Christian religion is not based on any elaborated code of laws affording definite rules for the determination of human controversies, but on the New Testament, the divinity of Christ, and a few comprehensive ideas of life and principles applicable to human relations, of which the golden rule is regarded as a general comprehensive statement. The spirit of Christianity soars above the material conditions that give rise to conflicts of interests in things, and calls on all to solve their

problems in accordance with its sublime ideals. The teachings of the Brahmans and Buddhists also exalt the spiritual aspect of life above the material, but they also deal with the details of rights, selfish interests, desires and activities, which in densely peopled countries call for so much regulation by human laws. Law in Mohammedan countries is also taught with a profound religious sanction and brooks no amendment by any human authority. But the comparative simplicity of the people, with whom Mohammed came in contact, afforded no basis for a code of laws adapted to the needs of the rich and populous countries over which his teaching spread, and the Koran, somewhat like the New Testament in this respect, contains only a few rules expressed in general terms. Upon these the great body of Mohammedan law has been elaborated by the doctors of it with detailed rules, conceived to be in accord with those contained in the Koran. The Hebrew law was also put forth with the declaration, "Thus saith the Lord," and taught by the priesthood as the words of God. It has not been adopted by alien people, as the Koran has, but being included in the Bible in use in Christian countries, is often referred to in connection with religious teachings. Its rules of law, however, are regarded as having been superseded by the far purer teachings of Christ.

In Europe and America, where the Christian religion prevails, there is now a more or less complete separation of church and state and of the field of religion from that of civil law. The constitutional and statutory laws, which have now attained such vast proportions, especially in the English-speaking countries, are wholly devoid of religious sanction and rest solely on human authority. They are not taught to the people by the clergy, but are printed and given more or less publicity through the newspapers and printed statute books. Constitutional law is generally regarded with a good measure of veneration by the general public, and can only be changed in the very deliberate manner provided in the constitution itself. Changes in the Constitution of the United States require Congressional action and ratification by the states. All the people are presumed to know its provisions, and all officials, high and

low, must swear to support it. In Europe most of the constitutions may be changed by the law-making power with comparative ease. Besides constitutional and statutory law we have the Common Law, covering a vast field, the principles of which find authoritative expression in the decisions of the courts, the reports of which now fill many thousands of volumes and are continually added to in ever increasing numbers.

Knowledge of the law is of course a prerequisite to its conscious observance. Knowledge of all these laws by all people is an impossibility. In fact no judge, lawyer or teacher knows all of them to which he is subject. Fortunately it is not necessary that any person should know all the laws, for many of them may never concern him, but it is necessary that all the laws of every kind be open and accessible to everybody, when he needs it for his guidance or the determination of his rights. It is eminently desirable that each person should know all the rules of law which he is required to observe. This includes all laws, national, state and city, and all corporate rules and regulations affecting his personal relations or his duties and obligations in the particular businesses with which he is connected in any capacity. This knowledge is essential to complete concert of action in each locality and in each business establishment.

In all republics the legislative bodies are free to abolish old and enact new laws relating to any matter within the field of their powers as outlined in the fundamental law which creates them. This affords full liberty to improve the law in every way. It also affords like liberty to do away with good and establish bad principles. It has the evil effects of so multiplying laws that many of them are wholly unknown to the people generally, and of causing many of those that are known to be generally disregarded. The penal statutes that are seldom enforced are very numerous, but fortunately few of them are of much importance. Those designed to assure safety on the streets and thoroughfares are perhaps the ones most generally disregarded with the most disastrous consequences. In a free and enlightened country it is natural that public spirited citizens, who perceive evils in the body politic, should seek to remedy

them by the enactment of new laws. From such persons within and without the legislative halls come the impulses that cause Congress, state legislatures and city authorities to continually grind out new enactments and amend and repeal old ones. This of itself means instability of so much of the law as fails to gain the general approval of those affected by it. Time is required to educate the people in new rules of conduct, and new laws are therefore less generally observed than old, well known ones. Respect for law is of prime importance in any country. Without it continuous, orderly development is impossible. Nothing else tends so surely to disrespect for law as the multiplication of laws which the people either do not know, or knowing, disapprove and disobey. Excessive legislative activity tends to defeat its own purposes. The public acquires some knowledge of new legislation from the printed statute books, which are furnished to certain officials and sold to lawyers and others, but more from the newspapers and other periodicals they are accustomed to read. The knowledge so gained by laymen is seldom complete or accurate. New enactments that appear of special interest are sometimes given much publicity in the newspapers while they are under consideration in Congress or the state legislature, but many laws relating to what are regarded as uninteresting subjects receive little or no attention from the press. Some instruction in the law is given to the multitude through the public proceedings in the courts and the newspaper reports of the decisions they make. But with all the information he can gain from all these sources, or from a visit to the great libraries, the layman is often confronted with problems he cannot solve unaided. To find the final and authoritative expression of the law bearing on any difficult question, when all the law books are at hand, requires the expert knowledge of the trained lawyer.

The members of the legal profession in Christian nations do not perform the function of teachers of the young in the principles of the law in the manner the Brahman priests instruct their pupils. They are rather paid advisers of and advocates for the adults who come to them for counsel or assistance. They deal with nice questions propounded by interested clients,

for the answers to which more or less research in the books is frequently required, rather than comprehensive instruction of the multitude in legislative enactments or the general principles of the law. There are numberless questions which the learned lawyer is unable to answer without careful search through the books, and many that the books either do not answer or give conflicting answers to. The ever-growing multitude of artificial persons, creatures of the law, with varying powers and attributes, gives rise to new questions relating to new enterprises and new forms of combination. Great corporations require the aid of a law department to advise and direct in all matters of law affecting them, and private persons, having difficult business problems to solve, find it necessary to ascertain their legal rights and duties from the lawyer.

Comparing the old with the new and the East with the West, it is apparent that the old East is more successful in inculcating and perpetuating the principles of its laws than the new West. The serious weakness of western theories and methods lies in their instability, multiplicity and indefiniteness. The most disastrous result to be anticipated is a feeling of disrespect for lawmakers and their works, which in times of great stress may undermine all law, as it has done in Russia and threatens to do in many other states. It may not be desirable to impose a religious sanction on laws made by fallible man, but no harm can come from a general and profound reverence for principles of order and rules of duty and of right which accord with justice. Simplification of the law cannot take place while so many active minds are engaged in devising rules to govern new forms of combination of capital, effort and labor to accomplish great undertakings, but there are fundamental principles, having the attributes of natural law, which are applicable to all human combinations and relations which can be concisely stated, taught and applied with great advantage. These principles endure of their own force and may not be disregarded with impunity. The best tests we know of their genuineness are the varied experiences of the nations as to their operation and effects. General principles, which all persons of ordinary intelligence may understand, determine the

substantial justice of all the special branches of the law with which only a few were deeply concerned. The learning of the legal profession will probably increase in technicality in accordance with the growth of the different fields of combination and activity with which the law deals. The necessity for specialization in the practice of the profession is apparent, and a large part of the lawyers in the cities now specialize in some particular field of the law.

Compulsory observance of the law is obtained through the action of the courts and executive officers. How far punishment and fear of punishment can be successfully employed in preventing crime and inducing obedience to the law cannot be measured with exactness. Severity of punishment has been characteristic of most despotic governments. The codes of Babylon and Assyria were shockingly savage and the people correspondingly brutal. During the days of extreme punishments in England crime was most prevalent. Impaling, hanging and maiming by command of rulers may deter from crime through fear, but by no possibility can the spirit that imposes them inculcate the lessons of good will and regard for the rights and feelings of others that is the only sure antidote to criminal impulses. So far as we are informed the morals of Babylonia and Assyria were always low. In the United States there has been a rapidly growing tendency to leniency in punishments and in many places extreme delay and laxity in the infliction of them. Some people attribute the wave of crime which has prevailed since the Great War to this condition. It is more logical to attribute it to the immoral lessons incident to war.

The application of force to procure obedience to the laws is resorted to in all civilized states, not merely in the enforcement of penal statutes, but also of civil rights. This force is exerted through public agencies. In savage tribes self-help is the rule, and each person enforces his rights as best he can. One of the best tests of advancement in social organization is efficiency in the enforcement of private rights through public agencies. The courts are the mouthpieces of the law, and they determine the application of it to all kinds of cases, civil and criminal.

No highly civilized country has ever dispensed with them. Respect for the law itself is largely dependent on general confidence in the learning, ability and impartiality of the judges. Courts presided over by able, upright judges, publicly hearing discussions of the law applicable to the cases presented to them by lawyers who have made search of the books to find the precise rules that govern, deciding the disputed points and explaining with more or less particularity the grounds of their decisions in the presence of the parties, jurors, witnesses and such other persons as attend the court, have a public influence of inestimable value. They cannot impart to the multitude a comprehensive knowledge of the law, but they can declare the principles applicable to the particular controversy in such manner as to inspire respect for the law and confidence in those who administer it. They can determine the particular controversy submitted and declare the rules applicable to all others of the same kind. In order that the courts may exercise their functions with a maximum of efficiency, it is highly desirable that legislators take heed that in their schemes to reform and improve the law, they neither mar its harmony by conflicting enactments nor unnecessarily increase its volume. In despotic countries or those where judicial proceedings are secret, some distrust of the law and of those who administer it is inevitable, and no state has yet succeeded in entirely eliminating it. But as knowledge of the law and appreciation of its value become general, confidence grows, and the people acquire a feeling of security that is so essential to comfort and prosperity. The actual, forcible execution of the judgments of courts in which the people have confidence seldom attracts much public interest, except when the death penalty is inflicted. The findings as to the facts and the determination of the questions of law are regarded as ending the controversy. The declarations and applications of the law to the various controversies as they arise give to it its living force in a well ordered state.

APPENDIX

CODE OF HAMMURABI OF BABYLON

[The following extracts are taken by permission from the excellent translation of Professor Harper published by the University of Chicago Press.]

The code of Hammurabi, engraved on a block of black diorite in the ancient cuneiform characters of the Babylonians, discovered at Susa by a French expedition under the direction of M. De Morgan in 1901-2 is the oldest body of written laws known to us. It is assigned to about 2250 B.C. Hammurabi was a military despot claiming to rule by authority of the gods Anu, Bel and Morduk. In the preface to his code, while he bases his authority on the will of the gods, he claims full credit and assumes full responsibility for all his works. He does not claim merely to be the instrument for the transmission of laws framed by a god, but promulgates the code as his own work, written in 282 sections. The despotic spirit in which it was framed is well indicated by the first section, which provides that, if a man charge another with a capital crime and cannot prove it, the accuser shall be put to death.

The second section exhibits the superstitions prevailing. One charged with sorcery must jump into the river and, if drowned his accuser might take his house; but if he came out unharmed his accuser should be put to death and the accused take his house. To bear false witness in a capital case was a capital crime, and in other cases subjected the guilty party to a penalty equal to that imposed for the offense charged.

Sec. 5. "If a judge pronounce a judgment, render a decision, deliver a verdict duly signed and sealed and afterward alter his judgment, they shall call that judge to account for the alteration of the judgment which he had pronounced, and he shall pay twelve-fold the penalty which was in said judgment; and, in the assembly, they shall expel him from his seat of judgment, and he shall not return, and with the judges in a case he shall not take his seat."

The death penalty was imposed for stealing the property of a temple or palace or receiving it from the thief; for purchasing slaves or other personal property from the son or servant of the owner without witnesses or contracts. A theft of an ox, sheep, ass, pig or boat, from a temple or palace might be commuted by payment of thirty fold; if from a freeman of tenfold, but if the thief was unable to pay he was liable to be put to death.

Sections 9 to 13 relate to claims for lost property and require a trial before the judges by the testimony of witnesses. The lost property was restored to the owner, the seller of it to the one found in possession was put to death as a thief, and the purchaser was repaid his purchase money from his estate. If the possessor failed to prove a purchase from another, he was put to death as a thief. If the claimant failed to prove title and identity of his property, he was put to death as a calumniator.

Death was also inflicted for stealing a minor son of another, aiding a slave to escape from the city gate, harboring an escaped slave and refusing to produce him, making a breach in a house, practicing brigandage, taking furniture from a burning house; on an officer sent on an errand of the king for hiring a substitute to go in his stead; on a governor for taking the property of an officer, letting an office for hire, presenting an officer in judgment to a man of influence or taking the kings gift from an officer, and on any man for deceiving a brander and causing him to brand a slave with the sign that he could not be sold, or for building a house so that it collapsed and caused the death of the owner.

To one seizing a fugitive slave and returning him to the owner the latter was required to pay two shekels of silver.

For robbery or murder by a brigand who escaped, the city and governor of the province where it was committed were required to pay the amount of the loss, itemized and sworn to by the loser, and a *mana* of silver to the heirs of the person killed.

If an officer in a garrison of the king was captured his field and garden were given to his son, if able to conduct the business, if too young one-third was given to the mother who was required to rear him, if given to a stranger and the officer returned, they were to be restored to him. If the officer from the beginning neglected his field, garden and house, and another took and conducted the business for three years, his right to continue to do so was established, but by one years neglect the right was not forfeited. If a merchant ransomed a captured officer, the officer was required to pay the ransom, if he had sufficient in his house, if not it should be paid from the temple of his city, and if there was not enough in the temple the palace should pay it. His field, garden or house could not be taken for his ransom.

Sec. 37. "If a man purchase the field, garden or house of an officer, constable or tax-gatherer, his deed tablet shall be broken (canceled) and he shall forfeit his money and he shall return the field, garden or house to its owner." The officer was also forbidden to deed these to his wife or assign them for debt, that is such as he held by virtue of his office, but lands bought from others he might assign for debt.

Sec. 40. "A woman, merchant or other property-holder may sell

field, garden or house. The purchaser shall conduct the business of the field, garden or house which he has purchased."

If a man rented a field and failed to raise a crop he must pay on the basis of adjacent fields and must break up the soil with hoes, harrow and return it to the owner. If he rented an unreclaimed field for three years and neglected it, the fourth year he must break it up and pay a prescribed rent in grain. Where crop rent was paid and afterward a flood carried away the remainder, it was the tenants loss, but if the loss occurred before payment, the remainder was divided in the agreed proportion. A tenant might assign his lease without consent of the landlord. Loss of his crop by flood or drouth entitled a debtor to an extension of time for a year and an abatement of a years interest. The use of land might be given as security for a loan and the land tilled by the lender, or a growing crop might be pledged. In either case the creditor took only his loan and interest.

Sec. 53. "If a man neglect to strengthen his dyke and do not strengthen it, and a break be made in his dyke and the water carry away the farm-land, the man in whose dyke the break has been made shall restore the grain which he has damaged."

Sec. 54. "If he be not able to restore the grain, they shall sell him and his goods, and the farmers whose grain the water has carried away shall share (the results of the sale.)"

Sec. 55. "If a man open his canal for irrigation and neglect it and the water carry away an adjacent field, he shall measure cut grain on the basis of the adjacent fields."

If a shepherd pastured his sheep in the field of another without agreement, he must pay two *Gur* of grain per *Gan* of land, and if he turned them in against the will of the owner, he must pay six *Gur* per *Gan*. For cutting down a tree in another's orchard one must pay half a *mana* of silver. If a field was let to a gardener for an orchard, the fifth year the gardener and owner shared equally of the fruit.

Sec. 61. "If the gardener do not plant the whole field, but leave a space waste, they shall assign the waste space to his portion."

If the tenant failed to plant the orchard but raised grain, he must pay rent. Where an orchard was given to a gardener to manage, the owner took two-thirds and the gardener one-third of the fruit. Where a tenant or a gardener neglected his work, he must pay rent on the basis of adjacent fields or orchards. Sections 66 to 99 inclusive are missing, having been cut off the stone at some unknown time prior to its recent discovery. Sections relating to dealings between merchants and their agents follow the missing portion.

Sec. 103. "If, when he goes on a journey, an enemy rob him of whatever he was carrying, the agent shall take an oath in the name of god and go free."

Sec. 104. "If a merchant give to an agent grain, wool, oil or goods of any kind with which to trade, the agent shall write down the value

and return (the money) to the merchant. The agent shall take a sealed receipt for the money which he gives to the merchant."

Sec. 105. "If the agent be careless and do not take a receipt for the money which he has given to the merchant, the money not receipted for shall not be placed to his account."

Sec. 108. "If a wine-seller do not receive grain as the price of drink, but if she receive money by the great stone, or make the measure for drink smaller than the measure for corn, they shall call that wine-seller to account, and they shall throw her into the water."

Sec. 109. "If outlaws collect in the house of a wine-seller, and she do not arrest these outlaws and bring them to the palace, that wine-seller shall be put to death."

Sec. 110. "If a priestess who is not living in a MAL. GE. A., open a wine-shop or enter a wine-shop for a drink, they shall burn that woman."

If a carrier of goods failed to deliver them, he was liable to pay five-fold for them. A creditor, who seized the grain of his debtor without his consent, must return it and lose his debt. If one seized another for a debt he did not owe, he was required to pay one-third *mana* of silver. If the creditor seized his debtor and he died in his house, there was no penalty.

Sec. 116. "If the one seized die of abuse or neglect in the house of him who seized him, the owner of the one seized shall call the merchant to account; and if it be a man's son (that he seized) they shall put his son to death; if it be a man's servant (that he seized) he shall pay one-third *mana* of silver and he shall forfeit whatever amount he had lent."

Sec. 117. "If a man be in debt and sell his wife, son or daughter, or bind them over to service, for three years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom."

Sec. 118. "If he bind over to service a male or female slave, and if the merchant transfer or sell such slave, there is no cause for complaint."

Sec. 119. "If a man be in debt and he sell his maid servant who has borne him children, the owner of the maid servant (i.e. the man in debt) shall repay the money which the merchant paid (him), and he shall ransom his maid servant."

The storage of grain and property for others was regulated and return to the owner enforced with penalties for withholding it. If the deposit was stolen the bailee must make good the loss.

Sec. 127. "If a man point the finger at a priestess or the wife of another and cannot justify it, they shall drag that man before the judges and they shall brand his forehead."

Sec. 128. "If a man take a wife and do not arrange with her the (proper) contracts, that woman is not a (legal) wife."

Sec. 129. "If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman would save his wife, or if the king would save his male servant (he may)."

Sec. 130. "If a man force the (bethrothed) wife of another, who has not known a male and is living in her father's house, and he lie in her bosom and they take him, that man shall be put to death and that woman shall go free."

Sec. 131. "If a man accuse his wife and she has not been taken in lying with another man, she shall take an oath in the name of God and she shall return to her house."

Sec. 132. "If the finger has been pointed at the wife of a man, and she has not been taken in lying with another man, for her husband's sake she shall throw herself into the river."

If a man was captured his wife must remain in his house if there were provisions, and if she went to another's house she must be thrown into the water, but if there were no provisions she might go to another's house, and if she bore children there and her husband returned she should go to him and the children remain with their father. If a man deserted his city his wife might go to another house and was not required to return to him in case he came back. If a man put away a wife or concubine who had borne him children, he must return her dowry and give her the income of field, garden and goods to bring up her children, and, when they were grown, she might take a son's part and marry the man of her choice. If a wife had not borne children, the husband might put her away, but must give her her marriage settlement and the portion she brought from her father's house and, if there were none, pay her one *mana* of silver for a divorce.

Sec. 141. "If the wife of a man, who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say "I have put her away," he shall let her go. On her departure nothing shall be given to her for divorce. If her husband say, "I have not put her away," her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant."

Sec. 142. "If a woman hate her husband and say: 'Thou shalt not have me,' they shall inquire into her antecedents for her defects; and if she has been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and go to her father's house."

Sec. 143. "If she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw her into the water."

If a man's wife gave him a maid servant who bore him children, he could not then take a concubine. If he had a wife who presented

him no children he might take a concubine, but she did not rank as a wife. A maid servant, who had borne children to her master, could not take rank with her mistress, but the mistress could not sell her. She might be sold if she had not borne children. If the wife became diseased, the husband might take another but could not put the first away. He must maintain her, but if she chose to go she might and take her dowry.

Sec. 150. "If a man give to his wife field, garden, house or goods, and he deliver to her a sealed deed, after (the death of) her husband, her children cannot make claim against her. The mother after her (death) may will to her child whom she loves, but to a brother she may not."

If a husband contracted with a wife that she should not be holden for his debts, creditors could not hold her for his debts, nor her creditors hold her husband for hers.

Sec. 153. "If a woman bring about the death of her husband for the sake of another man, they shall impale her."

Incest was punished with drowning, burning or a fine, according to the relation of the parties. If a man refused to consummate a marriage he had contracted, he forfeited the presents he had made, and, if after making a marriage settlement the bride's father refused to permit the marriage, he forfeited double the amount of the presents.

On the death of the wife her dowry belonged to her children, but if she had no children it went to her father's house, if he returned to the husband the marriage settlement.

Sec. 165. "If a man present field, garden or house to his favorite son and write for him a sealed deed; after the father dies when the brothers divide, he shall take the present which the father gave him, and over and above they shall divide the goods of the father's house equally."

Sec. 166. "If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for a marriage settlement in addition to his portion and they shall enable him to take a wife."

If a man's first wife died and he married a second and had children by both, the children took the dowries of their respective mothers and divided the goods of the father equally.

A father could not disinherit his son without cause nor for the first offense, but for a second grave crime he might do so. If a man having children by both his wife and maid servant called the children of the latter "My children," on his death they inherited equally with the children of the wife, otherwise they did not inherit, but the maid servant and her children were free. The widow took the dowry, the gifts made her by her husband and the use of his house for life. If the husband

made her no gift she took her dowry and a portion of his goods equal to that of a son. If she chose to remarry, she took her dowry only, leaving the rest to the children. If she then had more children and died, her dowry was divided among all her children, if she bore no more her children by the first husband took the dowry.

If a slave married a free woman the children were free, and whatever they acquired after marriage was divided on the slave's death, one-half to the master and the other to the woman for her children. A widow with minor children could not remarry without consent of the judges, and, in case she was allowed to marry again, the judges required husband and wife to administer and preserve the estate and rear the minors. Where a father gave to a daughter, who was a priestess or devotee, a deed of gift, it was for life only, unless the power to give it away after death was conferred by the deed. She took the income for life and on her death it went to her brothers.

If the father did not give a dowry to his daughter, who was a bride or devotee, she took a share of his goods equal to that of a son, which on her death passed to her brothers, except a Nu Par or priestess of Marduk, who took only one-third a son's portion of his goods, but a priestess of Marduk at her death might give to whomsoever she pleased.

If a father gave his daughter a dowry she did not share in his goods, but if he failed to do so she was entitled to a dowry after his death proportionate to his estate.

Sec. 185. "If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son."

If the adopted son was rebellious he might be returned to his father.

Sec. 188. "If an artisan take a son for adoption and teach him his handicraft, one may not bring claim for him."

Sec. 189. "If he do not teach him his handicraft, that adopted son may return to his father's house"

Sec. 191. "If a man who has taken a young child as a son and reared him, establish his own house and acquire children, and set his face to cut off the adopted son, that son shall not go his way. The father who reared him shall give to him of his goods one-third the portion of a son and he shall go. He shall not give to him of field, garden or house."

Sec. 192. "If the son of a NER.SEGA, or the son of a devotee, say to his father who has reared him, or his mother who has reared him: "My father thou art not," "My mother thou art not," they shall cut out his tongue."

Sec. 193. "If the son of a NER.SEGA, or the son of a devotee identify his own father's house and hate the father who has reared him and the mother who has reared him, and go back to his father's house, they shall pluck out his eye."

Sec. 194. "If a man give his son to a nurse and that son die in

the hands of the nurse, and the nurse substitute another son without the consent of his father or mother, they shall call her to account, and because she has substituted another son without the consent of his father or mother, they shall cut off her breast."

Sec. 195. "If a son strike his father they shall cut off his fingers."

Sec. 196. "If a man destroy the eye of another man, they shall destroy his eye."

Sec. 197. "If one break a man's bone, they shall break his bone."

Sec. 200. "If a man knock out a tooth of a man of his own rank, they shall knock out his tooth."

For other kinds of assaults pecuniary mulcts were imposed: for striking a superior sixty strokes with an ox-tail whip, for striking a man's son a slave was liable to have his ear cut off, for a blow in a quarrel the aggressor was required to pay the doctor and if death ensued half a *mana* of silver.

Sec. 209. "If a man strike a man's daughter and bring about a miscarriage, he shall pay ten *shekels* of silver for her miscarriage."

Sec. 210. "If that woman die they shall put his daughter to death."

The people were divided into three ranks, styled in this translation as men, freeman and slaves, and pecuniary mulcts for assaults and offenses to the person were graded accordingly. For operating for a wound and saving a man's life or opening an abscess and saving his eye a physician was entitled to ten *shekels* of silver, for a freeman five, and for a slave two. If by operation he caused a man's death or the loss of his eye, his fingers were to be cut off, if the death of a slave he must restore a slave of equal value. For setting a broken bone or curing diseased bowels the physician was entitled to five *shekels* of silver for a man, three for a freeman, and two for a slave. A veterinary surgeon for saving the life of an ox or an ass was allowed one-sixth of a *shekel* and if he caused its death was required to pay one-fourth its value.

Sec. 226. "If a brander without the consent of the owner of the slave, brand a slave with the sign that he cannot be sold, they shall cut off the fingers of that brander."

The compensation of house builders was regulated according to the size of the house.

Sec. 230. "If it cause the death of the son of the owner of the house, they shall put to death a son of that builder."

Sec. 231. "If it cause the death of a slave of the owner of the house, he shall give to the owner of the house a slave of equal value.

He must also restore the property destroyed.

The wages of boat builders were similarly regulated and they were bound to make the boat seaworthy. A boatman entrusted with a cargo was liable for a loss caused by his negligence, and also for sinking another boat. The hire of oxen and asses was regulated and the hirer

was liable to the owner for death or injury to the animal resulting from his neglect or abuse.

Sec. 250. "If a bull when passing through the street, gore a man and bring about his death, this case has no penalty."

Sec. 251. "If a man's bull have been wont to gore and they have made known to him his habit of goring, and he have not protected his horns or have not tied him up, and that bull gore the son of a man and bring about his death, he shall pay one-half *mana* of silver."

If a hired overseer of a farm stole seed or crops, his fingers were to be cut off and he was liable to pay damages for his neglect. The wages of boatmen, field laborers, herdsmen, artisans, brickmakers, tailors, carpenters, masons and other hired men were regulated by the code, and they were liable to pay for losses due to their negligence.

Sec. 282. "If a male slave say to his master: "Thou are not my master," his master shall prove him to be his slave and shall cut off his ear."

The character of this code accords with the despotic powers of its author. Its penalties are cruel and in some cases unjust to the last degree. The execution of a son or daughter for a crime of the father against the son or daughter of another is shockingly barbarous. Maiming as a punishment is both cruel and impolitic, as it reduces the usefulness of the culprit and tends to make him a confirmed criminal. It will be noticed that this code deals with the rights and duties of the subjects and is designed to punish crime, enforce the performance of contracts and obligations, regulate marriages, divorces, the inheritance of property and the wages of laborers. Although it mentions the temple and palace it does not purport to regulate either the religious establishment or the system of taxation.

ASSYRIAN LAW CODE

Excavations made at Kaleb-Shergat, site of Assur, the earliest capital of Assyria, by the German Orient Society, have resulted in the discovery of tablets on which were inscribed parts of a code of laws. The exact date of the making of these tablets has not been definitely determined, but is estimated at about 1,500 B.C. How much of the Code is lacking it is impossible to tell, but the parts deciphered and translated evidently lack much of being the whole of it. So much as we have indicates a lower stage of development than that at Babylon as evidenced by the Code of Hammurabi. It deals mainly with offenses for which savage punishments are imposed, in some cases on persons other than the guilty party. The following excerpts are taken from the translation of Professor Morris Jastrow, Jr. of the University of Pennsylvania, published in the *Journal of the American Oriental Society*, February, 1921.

1. (Incomplete).
2. "If a woman, be she the wife of a man or a man's daughter, does

not confess the theft or under pressure makes restitution, that woman bears her sin; on her husband, her sons and her daughters she has no claim."

3. "If a man is sick or has died (and) his wife steals something from his house, whether she gives it to a man or to a woman, or to anyone whomsoever, the wife of the man as well as the receivers shall be put to death; or if the wife whose husband is living steals from the house of her husband, whether she gives it to a man or to a woman or any one whomsoever, the man seizes his wife and imposes punishment; and on the receiver of the stolen property which she has given away, (the same) punishment is to be imposed that the husband imposes on his wife."

4. "If a male slave or a female slave receives anything from the wife of a man, the nose and ear of the slave, male or female, shall be cut off, and for the stolen property full restitution must be made. Either the man cuts off his wife's ear, or if he releases her, and does not cut off her ear, then also (the ear) of the slave, male or female, shall not be cut off, and they need not make restitution for the stolen property."

5. "If a man's wife steals something from a man's house and through someone else it is restored, the owner of the stolen property must swear that when it was taken 'the stolen property was in my house.' If the husband chooses he may restore the stolen property and redeem her (i.e. his wife) and cut off her ear, but if the husband does not wish to redeem her, then the owner of the stolen property may take her and cut off her nose."

6. "If a man's wife puts a pledge in pawn, the receiver must surrender it as stolen property."

7. "If a woman stretch out her hands against a man, they seize her. She must pay 30 manas of lead and she receives 20 lashes."

8. "If a woman in a brawl injures a man's testicle, they cut off one of her fingers; and if the man engages a physician and the other testicle of itself is destroyed, compensation shall be offered; or if in a fight the second testicle is (also) crushed, the fingers of both hands they mutilate."

9. "If a man stretches (his) hand against the wife of a man, treating her roughly (?), they seize him and determine his guilt. His fingers are cut off. If he bites her, his lower lip with the blade (?) of a sharp (?) axe is cut off."

10. Deals with murder but is too fragmentary for translation. 11. Prescribes the punishment of death for rape of a man's wife and 12 imposes death on her also if she meets a man at a rendezvous.

13. "If a man has intercourse with a man's wife, whether in an interior (?) or on the highway, knowing that she is another man's wife, they (mutually) agreeing to do so in the manner customary between a man and his wife, the man is adjudged to be an adulterer. But if he did not know she was another man's wife, the adulterer goes free. The man seizes his wife and can do what he pleases with her."

14. "If a man discovers his wife with a man, they seize him and determine his guilt, and both of them are put to death. There is no guilt because of him. But if he is caught and either before the king or before judges is brought, they (i.e., the judges) seize him and determine his guilt. If the man has already put his wife to death, then the man is also put to death. If he has cut off his wife's nose, the man (i.e., the adulterer) is to be castrated and his whole face mutilated."

15. Is incomplete, but relates to a similar sexual offense.

16. "If a man says to another, thy wife has been raped, and there are no witnesses, they bind him (i.e., the accused) in fetters and take him to the river."

17. "If a man says to his companion, whether in private or in a brawl, 'thy wife has been raped and I caught her,' but it turns out that he could not have caught her, and the man actually did not catch her (in the act), he receives 40 lashes and must perform one month's royal service. They summon him and one talent of lead he must hand over."

18. Prescribes 50 lashes for making a false charge of sodomy, and 19, castration for the crime of sodomy.

20. "If a man strikes a man's daughter, so that there is a miscarriage, they seize him and determine his guilt. Two talents and 30 mana of lead he must hand over; he receives 50 lashes and must perform one month's royal service."

21. This is incomplete, but provides for payment to the husband of a wife seized on the road by one who did not know she was a wife, and for a trial of the offender by the river ordeal.

22. "If a man's wife takes another man's wife into her house for sexual intercourse and the man (i.e., the one in whose house the woman was taken) knew that it was another man's wife (and) had intercourse with her as with another man's wife, and in the manner customary between a man and his wife, the woman is adjudged a 'procuress.' But if no intercourse as between a man and his wife had actually taken place, then neither the adulterer nor the procuress have done anything. They shall be released. And if the man's wife did not know (of the plot) and she entered the house of the woman, trusting the man's attitude toward her, who had intercourse with her and if after leaving the house, she confesses to having had intercourse, that woman is to be released—she is guiltless. The adulterer and the procuress are put to death. But if the woman does not confess, the husband may impose punishment on his wife as he pleases; and the adulterer and the procuress are put to death."

23. This section is long and involved and deals with the case of a wife who leaves her husband and lives with another man, and provides for the recovery of the wife by her husband or her purchase by the man with whom she has lived, according to the circumstances, for her punishment by cutting off her ears, for the trial by ordeal of the river of the man with whom she lived if he denies that he knew she was a wife, and for the fine he must pay if he had guilty knowledge.

24. "If a woman is retained in her father's house and her husband has died, the brothers of her husband may not divide (the estate) even though she has no son. Whatever her husband has voluntarily assigned to her, the brothers of her husband cannot annul; it is not to be included in the division. As for the balance of what the gods have provided they are entitled to it. They need not submit to a river ordeal or to an oath."

25. "If a woman is retained in her father's house and her husband dies, whatever her husband has voluntarily assigned to her, if there are children, they take it, but if there are no children, she takes it."

26. "If a woman is retained in her father's house, her husband may enter it (and) any marriage gift which her husband had given her, he may take, but he has no claim on the house of her father."

27. "If a woman enters a man's house as a widow and removes her minor son of her own accord from the house of her brother who brought him up, but no document of his adoption had been drawn up, he does not receive any share from the estate of the one who reared him; nor can one take him as a pledge (for debt). From the estate of his parents he receives the share due to him."

28. "If a woman enters her husband's house, her dowry and whatever she removes from her father's house or what her father-in-law upon her entering gave her, is free for her children. The children of her father-in-law may not touch it, and if her husband repudiates her, then he may give it to his children, according to his pleasure."

29. "If a father brings to the house of the father-in-law of his son a gift of anything that may be carried, the daughter is not thereby pledged to his son; and if there is another son whose wife is retained in the house of her father, and (the son) dies, then the wife of the dead son is handed over as a possession to his other son.

(Or) if the master of the daughter, whose daughter has received the gift is not willing that his daughter should be pledged by it, he, (i.e., the father of the young man), is free to take away the gift which had been brought to his daughter-in-law, (and) to give it to his son. And if he chooses, whatever has been given—in lead, silver, gold or anything except food, the capital thereof he may take back. As for food—he has no claim upon it."

30. "If a man sends a gift to the house of his father-in-law and his wife dies, and if his father-in-law has other (daughters) and the father-in-law is willing, he may marry another daughter in place of his dead wife, or he is free to take back whatever money may have been given (sc. to the wife). Grain or sheep or any kind of food is not given back to him; (only) money he receives back."

31. "If a woman is detained in the house of her father, her gift which was given to her, whether she takes it (to the house) of her father-in-law or does not take it, cannot serve as an asset (after the death?) of her husband."

32. Fragmentary. Deals with the case of a childless widow living with her father. If her father-in-law is dead she may go wherever she pleases.

33. "If a man marries a widow, without drawing up a formal contract and for two years she is retained in his house, that woman need not leave (sc. the house)."

34. "If a widow enters the house of a man, whatever she brings along belongs to her husband, but if the man goes to the widow, whatever he may have brought, all of it belongs to her."

35. The substance of this long section is that if a woman, retained in her father's house, is abandoned by her husband, and he fails to provide for her, she must be faithful to him for five years; then she may take another husband. But if she lives with another man within the five years, she must take her first husband back, and the second may take their children.

36. "If a man divorces his wife, if he chooses he may give her something, and if he does not choose, he need not give her anything and she goes away empty-handed."

37. "If a woman is kept (in the house of) her father and her husband divorces her, any voluntary gift that he has bestowed upon her, he may take, but on her marriage settlement which she brought with her he has no claim; it is free for the woman."

38. "If a man has given another man's daughter to a husband, her father having been at some previous time a debtor for a transaction, at the settlement of a former business partnership, he (i.e. the husband) must go (and) pay against the pledging of the girl the price of the girl. If he cannot give the pledge, then the man takes the one pledged.

But if she is living in misery, she is free to any who rescues her; and if the one who takes the girl, be it that a document is drawn up for him or that a claim is put in for him, settles for the price of the girl, the one pledged (is taken away (?))."

39. This section is long and deals with the veiling of women. Married women, unmarried daughters, captive women and unclean women are to be veiled when they appear on the highway. Harlots and slave girls are not to go veiled on penalty of having an ear cut off and 50 lashes, and one who sees an unveiled harlot must bring her to the palace, and is liable to 50 lashes and have his ear bored and perform one month's royal service, if he fails to do so.

40. "If a man places his captive (woman) veiled among five (or) six of his companions (and) in their presence veils her and says 'she is my wife,'—then she is his (legal) wife. The captive woman, who in the presence of men is not veiled, and her husband does not say 'she is my wife'—is not a (legal) wife; she is a captive woman. If the man dies and there are not children to his veiled wife, the captive children are regarded as (his) children. They receive their share."

41. "If a man on the day of blessing (?) pours oil on the head of a

man's daughter, or in a *šakultu* brings products (?) there can be no revocation."

42. "If a man, be it that he pours oil on the head or brings products (?), and the son for whom she was intended for a wife dies or flees, he is to give her to anyone whom he pleases among his remaining sons from the eldest to the youngest whose years are 10. If the father dies, and the son for whom he had intended (sc. the girl) as a wife dies, any son that there may be of a deceased son whose years are ten marries her; and if at the end of ten years the sons of any son are (still) minors, the father of the girl may, if he pleases, give his daughter (in marriage), and, if he pleases, he may make recompense by agreement; and if there is no (other) son, whatever may have been received in money (?) or anything except food, the capital (thereof) is to be returned, but any food is not to be returned."

43. "If an Assyrian man or an Assyrian woman is retained for a transaction, whatever its amount, in the house of a man, the full amount is taken away, and he is obliged to give a quittance. They mutilate his ear by boring."

44. This is long and partly mutilated. It provides that a woman pledged to a husband captured by an enemy and who has no relative on whom she can depend must remain faithful to him for two years, may testify that she is without support and that the judges shall ask the magistrates to turn over a field and house to her for two years. After two years she may live with the man of her choice. If her lost husband afterward returns, he may take her, but the second husband is entitled to his sons by her.

45. This section provides that a widow who has not left the house of her husband within a year, and for whom no provision has been made, may dwell in the house of whichever of her sons she chooses. Her sons are to support her. If she has no son of her own she may live with a son of a prior wife of her husband if there be any.

46. "If a man or a woman practice sorcery and they are caught in the act, they seize them and determine their guilt. Anyone who practises sorcery is to be put to death. A man who witnessed the performance of sorcery, or the one who from the mouth of an eye witness to the sorcery heard him say about them, 'I saw it' any one who hears (this), must go (and) report it to the king. If a witness who was (supposed) to report to the king denies it, and in the presence of Mercury, the son of the Sun, declares that he did not say so,—he is free. The eye witness who (is reported to have) said so and denies it, the king interrogates him as much as possible and sees his back. The sorcerer on the day that they bring him (sc. to the king) shall be forced to confess, and one should tell him that 'from the oath which thou hast sworn to the king and to his son, he (i.e. the king) will not absolve thee. According to the document which is sworn to the king and his son, thou hast sworn.'"

47. "If a man who has retained the daughter of a man who is his debtor, as a pledge in his house, asks her father, he may give her to a man; (but) if her father is not willing he cannot give (her). If her father has died, the owner must ask among her brothers. To each one of her brothers in turn he shall speak, and if one brother says: 'I will redeem my sister in one month'—if at the end of the month he does not redeem (her) the master is at liberty to declare her free and give her to a man."

(Only parts of the remaining 18 lines are preserved).

48. This is only partially preserved. It deals with the case of one who causes a miscarriage and prescribes the death penalty if the woman dies, or her husband has no son and miscarriage is caused by a blow.

49. "If a man strikes the wife of a man not yet advanced in pregnancy so that she has a miscarriage, for that guilt he must hand over two talents of lead."

50. "If a man strikes a harlot so that she has a miscarriage, blow for blow they impose upon him. He must make restitution for human life."

51. "If a woman with her consent brings on a miscarriage, they seize her and determine her guilt. On a stake they impale her and do not bury her; and if through the miscarriage she dies, they (likewise) impale her and do not bury her;"

(The last part is broken off.)

52. (Not sufficiently preserved for translation.)

53. This provides that, if a virgin be ravished under stated circumstances, her father may take the wife of the seducer and give her to be ravished, and that she shall not be returned to her husband. The ravished girl is given to the seducer. If the ravisher had no wife he must pay three times the price of the girl, but the father was not bound to take it and might give his daughter to another.

54. "If a virgin with her consent gives herself to a man, the man must swear an oath (sc. to that effect). On his (sc. the adulterer's) wife there is no claim. The seducer gives three times the price of the virgin, and the father can do to his daughter what he pleases."

55. This section also deals with illicit intercourse but is too badly mutilated for translation.

The foregoing laws are taken from the better preserved of the two large tablets. The following are taken from the other large one:

1. (Beginning mutilated . . . "ground (the oldest son) sets aside and takes two parts (as his share), (and) his brothers afterwards in turn set aside and take (sc. their share). From the field any expenditure (?) and all the outlays, the younger son subtracts (?). The oldest son sets aside the one part of his share, and in return for his second part exacts service to him from his brothers."

2. "If one among the brothers of an undivided estate destroys human life, they hand him over to the owner of the human life. If the owner of the human life chooses, he may kill him and if he chooses to be gracious, he merely takes away his share."

3. "If one among the brothers, of an undivided estate, either (meets with an accident (?)) or flees, his share falls to the king (according to) his pleasure."

4-5 and the first part of 6 are not well enough preserved for translation. They relate to the disposition of estates and 6 gives in detail the procedure for purchasing an estate for silver. Proclamation of the proposed sale, describing the property, is required to be made by the surrogate, and all persons having claims against it are called on to "draw up their documents in the presence of the recorder" and deposit them. Seven officials, high and low, assemble to dispose of the property and execute the muniments of title, which seem to clear it of all adverse claims. 7. is only partially preserved.

8. "If a man extends a 'large' boundary from his companion, they seize him and determine his guilt. He must hand over three times the area of what he has extended. One of his fingers is cut off; he receives 100 blows and he must perform one month's royal service."

9. "If a man removes a 'small' boundary of an enclosure, they seize him and determine his guilt. He must hand over one talent of lead and restore three times as much of the field as he extended. He receives 50 blows and must perform one month's royal service."

10. "If a man in a field that is not his digs a well and makes a trench (?) (and) seizes the trench for his well, he receives 30 blows and (he must perform) 20 days royal service." (Only the beginnings of the lines of the balance are preserved).

11. Is incomplete. 12. Provides that if the owner of a field sees another plant an orchard and digs a well on it without protesting that the one who plants the orchard shall have the use of it.

13. "If a man on ground that is not his, cultivates an orchard or digs a well, whether he raises vegetables or trees, they seize him and determine his guilt. On the day that the owner of the field goes out (sc. to inspect what has been done) he may take away the orchard together with its improvement."

14. "If a man on ground that is not his, breaks it up (?) and bakes bricks, they seize him and determine his guilt. He must hand over three times the amount of ground; and his bricks are taken away from him. He receives 50 (?) lashes and must perform (one month's) royal service."

15. The part of this section that is preserved is a substantial repetition of 14. The next one, 16, is all broken away.

17. "(If it is canal) water which is collected among them into a reservoir for irrigation, (the owners) of the fields divide up among themselves, and each, according to the extent of his field, does (his) work, and irrigates his field. But if there is no harmony among them, the judges ask each one about the agreement among them, and the judges take away the document and (each) one must do (his) work. (Each) must direct those waters for himself, and irrigate his field, but any one else's he is not to irrigate."

18. This relates to the same subject, but is incomplete.

Seven other fragments of tablets were unearthed which were not sufficiently complete for translation. They deal with injuries, contracts, care of herds of horses, slave girls, transactions regarding horses, oxen, and asses, stolen property, monetary transactions, persons held as pledges for debt and guarantees, and laws relating to agriculture.¹

The following summary of the Laws of the XII Tables is made from the fragments put together by Mm. Carton and Rouille and published in the Appendix to Cooper's Justinian. These fragments show that Table I deals with procedure and from it we quote:

LAWS OF THE XII TABLES OF ROME

"I. Go immediately with the person who cites you before the judge.

II. If the person you cite refuses to go with you before the judge take some that are present to be witnesses of it and you shall have a right to compel him to appear.

III. If the person cited endeavors to escape from you or puts himself into a posture of resistance you may seize his body.

IV. If the person prosecuted be old or infirm let him be carried in a *jumentum* or open carriage. But if he refuse that, the prosecutor shall not be obliged to provide him an *Arcera* or covered carriage.

V. But if the person cited find a surety let him go.

VI. Only a rich man shall be a surety for a rich man. But any security shall be sufficient for a poor man.

VII. The judge shall give judgment according to the agreement made between the parties by the way.

VIII. If the person cited has made no agreement with his adversary, let the *praetor* hear the cause from sunrise till noon; and let both parties be present when it is heard, whether it be in the *Forum* or *Comitium*.

IX. Let the same *praetor* give judgment in the afternoon, though but one of the parties be present.

X. Let no judgment be given after the going down of the sun.

XI. (Provides for arbitration by consent).

XII. Whoever shall not be able to bring any witnesses to prove his pretensions before the judge may go and make a clamour for three days together before his adversary's house.

The second table deals with robberies and offenses against property, and allows the killing of a robber who attacks in the night or with arms in the day time. A robber taken in the fact is to be beaten with rods and be the slave of the person robbed. If a slave commits a robbery he is to be beaten and thrown headlong from the capitol. For

¹ *Journal American Oriental Society*, Vol. 41, Part 1, February, 1921.

less aggravated offenses the judge might require payment to the injured party of double damages, and in all cases the parties concerned were permitted to settle the matter.

VII. "If one comes privately, by night and treads down another man's field of corn or reaps his harvest, let him be hanged up and put to death as a victim devoted to Ceres" (but if a child the Praetor ordered him corrected).

Table III deals with debtor and creditor.

I. Let him who takes more than one per cent interest for money be condemned to pay four times the sum lent.

II. When any person acknowledges a debt or is condemned to pay it, the creditor shall give his debtor thirty days for the payment of it, after which he shall cause him to be seized and brought before a judge.

III. If the debtor refuse to pay his debt and can find no security his creditor may carry him home, and either tie him by the neck or put irons upon his feet, provided the chain does not weigh above fifteen pounds, but it may be lighter if he pleases.

IV. If the captive debtor will live at his own expense let him, if not let him who keeps him in chains allow him a pound of meal a day or more if he pleases.

V. The creditor may keep his debtor prisoner for sixty days. If in this time the debtor does not find means to pay him, he that detains him shall bring him out before the people three market days and proclaim the sum of which he has been defrauded.

VI. If the debtor be insolvent to several creditors, let his body be cut in pieces on the third market day. It may be cut into more or fewer pieces with impunity. Or if his creditors consent to it, let him be sold to foreigners beyond the Tiber.

Table IV. relates to paternal rights.

I. Let the father have the power of life and death over his legitimate children and let him sell them when he pleases.

II. But if the father has sold his son three times, let the son then be out of the father's power.

III. If the father has a child born which is monstrously deformed let him kill him immediately.

IV. Let not a son whose father has so far neglected his education as not to teach him a trade be obliged to maintain his father in want, otherwise let all sons be obliged to relieve their fathers.

V. Let not a bastard be obliged to maintain his father.

Table V. permits the making of wills and provides for the division of estates among the heirs of intestates.

Table VI. as given is:

I. When a man conveys an estate to another let the terms of the conveyance create the right.

II. If a slave, who was made free on condition of paying a certain sum, be afterward sold, let him be set at liberty if he pay the person who has bought him the sum agreed upon.

III. Let not any piece of merchandise, though sold and delivered, belong to the buyer till he has paid for it.

IV. Let two years possession amount to a prescription for lands and one for moveables.

V. In litigated cases the presumption shall always be on the side of the possessor, and in disputes about liberty or slavery the presumption shall always be on the side of liberty.

Table VII relates to a number of wrongs and crimes and prescribes punishment or compensation. For maliciously burning the house or corn of another or for false swearing the penalty of death is imposed, by burning for the former and hurling from the capitol for the latter. Parricides were to be sewed in a leather bag and thrown in the river. One who kills a freedman or uses magical words to hurt him or prepares or gives him poison is to be punished as a homicide.

Table VIII relates to diverse matters and requires a space of two and one-half feet between houses, roads to be eight feet wide and allows a traveller to drive out on either side of a bad road. It permits societies to make by-laws, provided they do not conflict with public law.

Table IX. declares among other things.

I. Let not privilege be granted to any person.

III. It shall be a capital crime for a judge or arbitrator to take money for passing judgment.

IV. Let all causes relating to the life liberty or rights of a Roman citizen be tried only in *comitia* by centuries.

Table X. relates to funerals and ceremonies for the dead and prohibits excessive outlay or display and excessive manifestations of sorrow.

Table XI. relates to public and private worship.

Table XII provides,

I. When a woman shall have cohabited with a man for a whole year without having been three nights absent from him, let her be deemed his wife.

II. If a man catches his wife in adultery or finds her drunk he may with the consent of her relations punish her even with death.

III. When a man will put away his wife, the form of doing it shall be by taking from her the keys of the house and giving her what she brought. This shall be the manner of a divorce.

IV. A child born of a widow in the tenth month after the decease of her husband shall be deemed legitimate.

V. It shall not be lawful for the patricians to intermarry with the plebeians."

MANAVA-DHARMA-SASTRA

CODE OF MANU

There is no more remarkable code of laws than that of Manu, regarded by the Hindoos as the son of Brahma and first of created beings. The date of its compilation, in the form in which it is now preserved in the Sanscrit characters, is uncertain. Sir William Jones estimated it about 880 B.C. It is intensely religious in tone and requirements, and is not merely a set of rules to be enforced by those who govern the multitude, but imposes many severe restrictions on kings and their officers and the priestly order.

Its leading peculiarity is that it divides the people into castes, assigns to each certain duties and employments, prohibits other methods of gaining subsistence and requires the education of the young as a civil and religious duty. It prescribes forms of worship, sacrifices, religious and domestic duties, the organization of governments and military forces, rates of taxation, rules of property, of evidence and procedure in courts, punishments for crime, penance and expiation for sins and transgressions, and teaches the transmigration of the soul from form to form until final beatitude is attained. In the original it is written in verse and is divided into twelve chapters. In most parts the rules are so clearly and concisely stated that nothing can be gained by attempting to summarize or condense. Chapter I gives an account of the Creation.

1. "Manu sat reclined, with his attention fixed on one object, the Supreme God; when the divine Sages approached him, and, after mutual salutations in due form, delivered the following address:

2. "Deign, sovereign ruler, to appraise us of the sacred laws in their order, as they must be followed by all the four classes, and by each of them, in their several degrees, together with the duties of every mixed class;

3. For thou, Lord, and thou only among mortals, knowest the true sense, the first principle, and the prescribed ceremonies, of this universal, supernatural Vêda, unlimited in extent and unqualified in authority.

4. "He whose powers were measureless, being thus requested by the great Sages, whose thoughts were profound, saluted them with all reverence, and gave them a comprehensive answer, saying: 'Be it heard!'

5. "This universe existed only in the first divine idea yet unexpanded, as if involved in darkness, imperceptible, undefinable, undiscoverable by reason, and undiscoverable by revelation, as if it were wholly immersed in sleep:

6. "Then the sole self-existing power, himself undiscerned but making this world discernible, with five elements and other principles of nature, appeared with undiminished glory, expanding his idea, or dispelling the gloom.

7. "He whom the mind alone can perceive, whose essence eludes the

external organs, who has no visible parts, who exist from eternity, even He, the soul of all beings, whom no being can comprehend, shone forth in person.

8. "He, having willed to produce various beings from his own divine substance, first with a thought created the waters, and placed in them a productive seed:

9. "The seed became an egg bright as gold, blazing like the luminary with a thousand beams; and in that egg, he was born himself, in the form of Brahma, the great forefather of all spirits.

10. "The waters are called *nárá*, because they were the production of *Nárá*, or the spirit of God; and since they were his first *ayana*, or place of motion, he thence is named *Náráyana*, or moving on the waters.

11. "From that which is, the first cause, not the object of sense, existing everywhere in substance, not existing to our perception, without being or end, was produced the divine male, famed in all worlds under the appellation of Brahma.

12. "In that egg the great power sat inactive a whole year of the Creator, at the close of which, by his thought alone, he caused the egg to divide itself;

13. "And from its own two divisions he framed the heaven above and the earth beneath: in the midst he placed the subtle ether, the eight regions, and the permanent receptacle of waters.

14. "From the supreme soul he drew forth Mind, existing substantially though unperceived by sense, immaterial; and before mind, or the reasoning power, he produced consciousness, the internal monitor, the ruler;

15. "And, before them both, he produced the great principle of the soul, or first expansion of the divine idea; and all vital forms endowed with the three qualities of goodness, passion and darkness; and the five perceptions of sense, and the five organs of sensation.

16. "Thus having at once pervaded, with emanations from the Supreme Spirit, the minutest portions of six principles immensely operative, consciousness and the five perceptions, He framed all creatures;

31. "That the human race might be multiplied, He caused the Brahman, the Cshatriya, the Vaisya, and the Súdra (so named from the scripture, protection, wealth, and labour) to proceed from his mouth, his arm, his thigh, and his foot.

32. "Having divided his own substance, the mighty power became half male, half female, or nature active and passive; and from that female he produced Viráj:

Then follows an account of the creations of various beings from lords of created beings, genii, giants and men, to the smallest insects and vegetables.

51. "He, whose powers are incomprehensible, having thus created both me and this universe, was again absorbed in the supreme Spirit, changing the time of energy for the time of repose.

52. "When that power awakes (for though slumber be not predicable of the sole eternal Mind, infinitely wise and infinitely benevolent, yet it is predicted of Brahma, figuratively, as a general property of life) then has this world its full expansion; but, when he slumbers with a tranquil spirit, then the whole system fades away;

53. "For while he reposes, as it were, in calm sleep, embodied spirits, endued with principles of action, depart from their several acts, and the mind itself becomes inert;

54. "And when they once are absorbed in that supreme essence, then the divine soul of beings withdraws his energy, and placidly slumbers;

55. "Then too this vital soul of created bodies, with all the organs of sense and of action, remains long immersed in the first idea or in darkness, and performs not its natural functions, but migrates from its corporal frame:

56. "When, being again composed of minute elementary principles, it enters at once into vegetable or animal seed, it then assumes a new form.

57. "Thus that immutable power, by waking and reposing alternately, revivifies and destroys in eternal succession, this whole assemblage of locomotive and immovable creatures."

After this is a statement how Bhrigu was appointed by Manu to promulgate his laws, how time is divided for mortals and for the Gods, how Brahma reposes during his long night and awakening reanimates the world and resumes the work of creation, how time is divided into the *Cṛitā*, the *Trétā*, the *Dwápara* and the *Cālī* ages.

86. "In the *Cṛitā* the prevailing virtue is declared to be in devotion; in the *Trétā*, divine knowledge; in the *Dwápara*, holy sages call sacrifice the duty chiefly performed; in the *Cālī*, liberality alone.

87. "For the sake of preserving this universe, the Being, supremely glorious, allotted separate duties to those who sprang respectively from his mouth, his arm, his thigh and his foot.

88. "To Brahmans he assigned the duties of reading the *Véda*, of teaching it, of sacrificing, of assisting others to sacrifice, of giving alms, if they be rich, and, if indigent, of receiving gifts:

89. "To defend the people, to give alms, to sacrifice, to read the *Véda*, to shun the allurements of sensual gratification, are, in a few words, the duties of a *Cshatriya*:

90. "To keep herds of cattle, to bestow largesses, to sacrifice, to read the scripture, to carry on trade, to lend at interest, and to cultivate land are prescribed or permitted to a *Vaisya*:

91. "One principal duty the supreme Ruler assigns to a *Súdra*; namely, to serve the before mentioned classes, without depreciating their worth.

92. "Man is declared purer above the navel; but the self-creating Power declared the purest part of him to be his mouth.

93. "Since the Brahman sprang from the most excellent part, since he was the first born, and since he possesses the *Véda*, he is by right the chief of this whole creation.

The Brahman is declared to be a constant incarnation of Dharma, God of Justice and the highest among men for whose instruction the code was promulgated.

107. "In this book appears the system of law in its full extent, with the good and bad properties of human actions, and the immemorial customs of the four classes.

108. "Immemorial custom is transcendent law, approved in the sacred scripture, and in the codes of divine legislators: let every man, therefore, of the three principal classes, who has a due reverence for the supreme spirit which dwells in him, diligently and constantly observe immemorial custom:

The balance of this chapter is a partial summary of the contents of the following ones.

The next five chapters deal mainly with the education, duties, conduct and privileges of the Brahmins. Chapter 2 is "On Education; or on the Sacerdotal Class, and the First Order."

1. "Know that system of duties, which is revered by such as are learned in the Védas, and impressed, as the means of attaining beatitude, on the hearts of the just, who are ever exempt from hatred and inordinate affection.

2. "Self-love is no laudable motive, yet an exemption from self-love is not to be found in this world: on self-love is grounded the study of scripture, and the practice of actions recommend in it.

3. "Eager desire to act has its root in expectation of some advantage; and with such expectation are sacrifices performed; the rules of religious austerity and abstinence from sins are all known to rise from hope of remuneration.

4. "Not a single act here below appears ever to be done by a man free from self-love; whatever he performs, it is wrought with his desire of a reward.

5. "He, indeed who should persist in discharging these duties without any view to their fruit, would attain hereafter the state of the immortals, and even in this life, would enjoy all the virtuous gratifications, that his fancy could suggest.

6. "The roots of law are the whole Véda, the ordinances and moral practices of such as perfectly understand it, the immemorial customs of good men, and, in cases quite indifferent, self-satisfaction.

13. "A knowledge of right is a sufficient incentive for men unattached to wealth or to sensuality; and to those who seek a knowledge of right, the supreme authority is divine revelation.

14. "But, when there are two sacred texts, apparently inconsistent, both are held to be law; for both are pronounced by the wise to be valid and reconcilable.

15. "Thus in the Véda are these texts: "let the sacrifice be when the sun has arisen," and "before it has arisen," and "when neither sun

nor stars can be seen: " the sacrifice, therefore may be performed at any or all of those times.

16. "He whose life is regulated by holy texts, from his conception even to his funeral pile, has a decided right to study this code; but no other man whatsoever.

17. "Between the two divine rivers Saraswatī and Hrīshadwatī, lies the tract of land, which the sages have named Brahmāvarta, because it was frequented by Gods:

18. "The custom preserved by immemorable tradition in that country, among the four pure classes, and among those which are mixed, is called approved usage.

28. "By studying the Vēda, by religious observances, by oblations to fire, by the ceremony of *Traividya*, by offering to the Gods and Manes, by the procreation of children, by the five great sacraments, and by solemn sacrifices, this human body is rendered fit for a divine state.

29. "Before the section of the navel string a ceremony is ordained on the birth of a male: he must be made, while sacred texts are pronounced, to taste a little honey and clarified butter from a golden spoon.

30. "Let the father perform or, if absent, cause to be performed, on the tenth or twelfth day after the birth, the ceremony of giving a name; or on some fortunate day of the moon, at a lucky hour, and under the influence of a star with good qualities.

31. "The first part of a Brahman's compound name should indicate holiness; of a Cshatriya's, power; of a Vaisya's, wealth; and a Sūdra's contempt.

32. "Let the second part of the priest's name imply prosperity; of the soldier's preservation; of the merchant's nourishment; of the servant's humble attendance.

33. "The names of women should be agreeable, soft, clear, captivating the fancy, auspicious, ending in long vowels, resembling words of benediction.

34. "In the fourth month the child should be carried out of the house to see the sun; in the sixth month he should be fed with rice; or that may be done, which, by the custom of the family is thought most propitious.

35. "By the command of the Vēda, the ceremony of tonsure should be legally performed by the three first classes in the first of third year after birth.

36. "In the eighth year from the conception of a Brahman, in the eleventh from that of a Cshatriya, and in the twelfth from that of a Vaisya let the father invest the child with the mark of his class:

37. "Should a Brahman, or his father for him, be desirous of his advancement in sacred knowledge; a Cshatriya, of extending his power; or a Vaisya of engaging in mercantile business; the investiture may be made in the fifth, sixth, or eighth years respectively.

38. "The ceremony of investiture hallowed by the *gáyatri* must not be delayed, in the case of a priest, beyond the sixteenth year; nor in that of a soldier, beyond the twenty-second; nor in that of a merchant, beyond the twenty-fourth.

39. "After that, all youths of all three classes, who have not been invested at the proper time, became *vrátyas*, or outcastes, degraded from the *gáyatri*, and condemned by the virtuous:

53. "Let the student, having performed his ablution, always eat his food without distraction of mind; and, having eaten, let him thrice wash his mouth completely, sprinkling with water the six hollow parts of his head, or his eyes, ears, and nostrils.

54. "Let him honor all his food, and eat it without contempt; when he sees it let him rejoice and be calm, and pray that he may always obtain it.

55. "Food, eaten constantly with respect, gives muscular force and generative power; but, eaten irreverently, destroys them both.

56. "He must beware of giving any man what he leaves; and of eating anything between morning and evening: he must also beware of eating too much, and of going any whither with a remnant of his food unswallowed.

63. "A youth of the three highest classes is named *upavítí*, when his right hand is extended for the cord to pass over his head and be fixed on his left shoulder; when his left hand is extended, that the thread may be placed on his right shoulder, he is called *práchinávítí*; and *navítí*, when it is fastened on his neck.

64. "His girdle, his leathern mantle, his staff, his sacrificial cord, and his ewer, he must throw into the water, when they are worn out or broken, and receive others hallowed by mystical texts.

65. "The ceremony of *césanta*, or cutting off the hair, is ordained for a priest in the sixteenth year from conception; for a soldier in the twenty-second; for a merchant two years later than that.

66. "The same ceremonies, except that of the sacrificial thread, must be duly performed for women at the same age and in the same order, that the body may be made perfect; but without any text from the Vêda.

67. "The nuptial ceremony is considered as the complete institution of women, ordained for them in the Vêda, together with reverence of their husbands, dwelling first in their fathers family, the business of the house, and attention to sacred fire.

69. "The venerable preceptor having girt his pupil with the thread, must first instruct him in purification, in good customs, in the management of the consecrated fire, and in the holy rites of morning, noon, and evening.

70. "When the student is going to read the Vêda, he must perform an ablution, as the law ordains, with his face to the north, and, having paid scriptural homage, he must receive instruction, wearing a clean vest, his members being duly composed.

71. "At the beginning and end of the lecture, he must always clasp both

the feet of his preceptor; and he must read with both his hands closed: (this is called scriptural homage.)

76. "Brahma milked out, as it were, from the three Védas, the letter *A*, the letter *U*, and the letter *M*, which form from their coalition the trilateral monosyllables, together with three mysterious words, *bhur*, *bhuvah*, *swar*, or earth, sky, heaven:

79. "And a twice born man, who shall a thousand times repeat those three (or *óm*, the *vyáhr̥itis*, and the *gáyatrī*,) apart from the multitude, shall be released in a month even from a great offense, as a snake from his slough.

80. "The priest, the soldier and the merchant, who shall neglect this mysterious text, and fail to perform in due season his peculiar acts of piety, shall meet with contempt among the virtuous."

The organs of sense are enumerated and the necessity for keeping mastery of them and abstaining from sensual gratification is declared. Self-control, repetition of the holy texts, purification by bathing and reading the Vēda are enjoined over and over again.

108. "Let the twice-born youth, who has been girt with the sacrificial cord, collect wood for the holy fire, beg food of his relations, sleep on a low bed, and perform such offices as may please his preceptor, until his return to the house of his natural father.

109. "Ten persons may legally be instructed in the Vēda; the son of a spiritual teacher; a boy who is assiduous; one who can impart other knowledge; one who is just; one who is pure; one who is friendly; one who is powerful; one who can bestow wealth, one who is honest; and one who is related by blood.

110. "Let not the sensible teacher tell any other what he is not asked, nor what he is asked improperly; but let him, however intelligent, act in the multitude as if he were dumb:

111. "Of the two persons him, who illegally asks, and him, who illegally answers, one will die, or incur odium."

Definite rules are given for saluting persons of the various classes and those related to the speaker in the degrees named.

138. "Way must be made for a man in a wheeled carriage, or above ninety years old, or afflicted with disease, or carrying a burthen; for a woman; for a priest just returned from the mansion of his preceptor; for a prince and for a bridegroom:

146. "Of him, who gives natural birth, and him, who gives knowledge of the whole Vēda, the giver of sacred knowledge is the more venerable father; since the second or divine birth ensures life to the twice-born both in this world and hereafter eternally.

154. "Greatness is not conferred by years, not by gray hairs nor by wealth, not by powerful kindred: the divine sages have established this rule; "whoever has read the Védas and their Angas, he among us is great."

155. "The seniority of priests is from sacred learning; of warriors from valour; of merchant from abundance of grain; of the servile class only from priority of birth.

159. "Good instruction must be given without pain to the instructed; and sweet gentle speech must be used by a preceptor, who cherishes virtue.

160. "He, whose discourse and heart are pure, and ever perfectly guarded, attains all the fruit arising from his complete course of studying the Vēda.

161. "Let not a man be querulous even though in pain; let him not injure another in deed or in thought; let him not even utter a word, by which his fellow creature may suffer uneasiness; since that will obstruct his own progress to future beatitude.

162. "A Brahman should constantly shun worldly honour, as he would shun poison; and rather constantly seek disrespect, as he would seek nectar;

163. "For though scorned, he may sleep with pleasure; with pleasure may be awake; with pleasure may he pass through this life; but the scorner utterly perishes.

171. "Sages call the *Āchārya* father, from his giving instruction in the Vēda: nor can any holy rite be performed by a young man, before his investiture.

172. "Till he be invested with the signs of his class, he must not pronounce any sacred text, except what ought to be used in obsequies to an ancestor; since he is on a level with a Sūdra before his new birth from the revealed scripture:

175. "These following rules must a Brahmachāri, or student in theology observe, while he dwells with his preceptor; keeping all his members under control, for the sake of increasing his habitual devotion.

176. "Day by day, having bathed and been purified, let him offer fresh water to the gods, the Sages, and the Manes; let him show respect to the images of the deities, and bring wood for the oblation to fire.

177. "Let him abstain from honey, from fresh meat, from perfumes, from chaplets of flowers, from sweet vegetable juices, from women, from all sweet substances turned acid, and from injury to animated beings;

178. "From unguents for his limbs, and from black powder for his eyes, from wearing sandals, and carrying an umbrella, from sensual desires, from wrath, from covetousness, from dancing, and from vocal and instrumental music;

179. "From gaming, from disputes, from detraction, and from falsehood, from embracing or wantonly looking at women, and from disservice to other men.

182. "Let him carry water-pots, flowers, cow-dung, fresh earth and

cusa-grass, as much as may be useful to his preceptor; and let him perform every day the duty of a religious mendicant.

183. "Each day must a Brahman student receive his food by begging with due care, from the houses of persons renowned for discharging their duties, and not deficient in performing the sacrifices which the Vêda ordains.

184. "Let him not beg from the cousins of his preceptor; nor from his own cousins; nor from other kinsmen by the fathers side, or by the mothers; but, if other houses be not accessible, let him begin with the last of those in order, avoiding the first;

185. "Or, if none of those houses just mentioned can be found, let him go begging through the whole district round the village, keeping his organs in subjection, and remaining silent; but let him turn away from such as have committed any deadly sin.

186. "Having brought logs of wood from a distance, let him place them in the open air; and with them let him make an oblation to fire without remissness, both evening and morning.

187. "He, who for seven successive days omits the ceremony of begging food, and offers not wood to the sacred fire, must perform the penance of an avacîrni, unless he be afflicted with illness.

188. "Let the student persist constantly in such begging, but let him not eat the food of one person only; the subsistence of a student by begging is held equal to fasting in religious merit.

189. "Yet, when he is asked in a solemn act in honour of the Gods or the Manes, he may eat at his pleasure the food of a single person; observing, however, the laws of abstinence and the austerity of an anchorite: thus the rule of his order is kept inviolate.

190. "This duty of a mendicant is ordained by the wise for a Brahman only; but no such act is appointed for a warrior, or for a merchant."

Very precise rules are given for the conduct of the scholar in the presence of his preceptor and while receiving instruction. The utmost respect and deference must be constantly shown.

224. "The chief temporal good is by some declared to consist in virtue and wealth; by some, in wealth and lawful pleasure; by some, in virtue alone; by others, in wealth alone; but the chief good here below is an assemblage of all three: this is a sure decision:

225. "A teacher of the Vêda is the image of God; a natural father, the image of Brahma; a mother, the image of the earth; an elder whole brother, the image of the soul.

226. "Therefore a spiritual and a natural father, a mother and an elder brother, are not to be treated with disrespect, especially by a Brahman, though the student be grievously provoked.

227. "That pain and care which a mother and father undergo in producing and rearing children, cannot be compensated in a hundred years.

228. "Let every man constantly do what may please his parents: and, on all occasions, what may please his preceptor; when those three are satisfied, his whole course of devotion is accomplished.

241. "In case of necessity, a student is required to learn the Vēda, from one who is not a Brahman, and, as long as that instruction continues, to honour his instructor with obsequious assiduity;

242. "But a pupil who seeks the incomparable path to heaven, should not live to the end of his days in the dwelling of a preceptor who is no Brahman, or who has not read all the Vēdas with their Angas.

245. "Let not a student, who knows his duty, present any gift to his preceptor before his return home; but when, by his tutors permission, he is going to perform the ceremony on his return, let him give the venerable man some valuable thing to the best of his power;

246. "A field, or gold, a jewel, a cow, or a horse, an umbrella, a pair of sandals, a stool, corn, clothes, or even any very excellent vegetable: thus will he gain the affectionate remembrance of his instructor.

247. "The student for life must, if his teacher die, attend on his virtuous son or his widow, or on one of his paternal kinsmen, with the same respect which he showed to the living:

248. "Should none of those be alive, he must occupy the station of his preceptor, the seat, and the place of religious exercises; must continually pay due attention to the fires, which he had consecrated; and must prepare his own soul for heaven.

Chapter 3 is "On Marriage or the Second Order."

1. "The discipline of the student in the three Vēdas may be continued for thirty-six years, in the house of his preceptor; or for half that time, or for a quarter of it, or until he perfectly comprehend them:

2. "A student, whose rules have not been violated, may assume the order of a married man, after he has read in succession a *sāc'hā*, or branch from each of the three, or from two, or from any one of them.

3. "Being justly applauded for the strict performance of his duty and having received from his natural or spiritual father the sacred gift of the Vēda, let him sit on an elegant bed, decked with a garland of flowers, and let his father honour him, before his nuptials, with a present of a cow.

4. "Let the twice-born man, having obtained the consent of his venerable guide, and having performed his ablutions with stated ceremonies, on his return home, as the law directs, espouse a wife of the same class with himself and endued with the marks of excellence.

5. "She, who is not descended from his paternal or maternal ancestors, within the sixth degree, and who is not known by her family name to be of the same primitive stock with his father or mother, is eligible by a twice-born man for nuptials and holy union:

6. "In connecting himself with a wife, let him studiously avoid the

ten following families, be they ever so great, or ever so rich in kine, goats, sheep, gold and grain:

7. "The family which has omitted prescribed acts of religion; that which has produced no male children; that, in which the Vēda has not been read; that, which has thick hair on the body; and those, which have been subject to hemorrhoids, to phthisis, to dyspepsia, to epilepsy, to leprosy, and to elephantiasis.

8. "Let him not marry a girl with reddish hair, nor with any deformed limb; nor one troubled with habitual sickness; nor one either with no hair or with too much; nor one immoderately talkative; nor one with inflamed eyes;

9. "Nor one with the name of a constellation, or of a tree, or of a river, of a barbarous nation, or of a mountain, of a winged creature, a snake or a slave; nor with any name raising an image of terror.

10. "Let him chuse for his wife a girl, whose form has no defect, who has an agreeable name; who walks gracefully like a plenicopteros, or like a young elephant; whose hair and teeth are moderate respectively in quantity and size; whose body has exquisite softness.

11. "Her, who has no brother, or whose father is not well known, let no sensible man espouse, through fear lest, in the former case, her father should take her first son as his own to perform his obsequies; or, in the second case, lest an illicit marriage should be contracted.

12. "For the first marriage of the twice-born classes, a woman of the same class is recommended; but for such as are impelled from inclination to marry again, women in the direct order of the classes are to be preferred;

13. "A Súdra woman only must be the wife of a Súdra; she and a Vaisya, of a Vaisya; they two and a Cshatryia, of a Cshatriya; those two and a Brahmani of a Brahman."

Eight forms of marriage ceremony are named and defined as follows:

27. "The gift of a daughter, clothed only with a single robe, to a man learned in the Vēda, whom her father voluntarily invites, and respectfully receives, is the nuptial right called *Brahma*.

28. "The rite which sages call *Daiva*, is the gift of a daughter, whom her father has decked in gay attire, when the sacrifice is already begun, to the officiating priest, who performs that act of religion.

29. "When the father gives his daughter away, after having received from the bridegroom one pair of kine, or two pairs, for uses prescribed by law, that marriage is termed *Arsha*.

30. "The nuptial rite called *Prájápatya*, is when the father gives away his daughter with due honour, saying distinctly, "May both of you perform together your civil and religious duties."

31. "When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsmen, and to the damsel herself, takes her voluntarily as his bride, that marriage is named *Asura*.

32. "The reciprocal connection of a youth and a damsel, with mutual desire, is the marriage denominated *Gándharva*, contracted for the purpose of amorous embraces, and proceeding from sensual inclination.

33. "The seizure of a maiden by force from her house, while she weeps and calls for assistance, after her kinsmen and friends have been slain in battle, or wounded and their houses broken open, is the marriage styled *Rácshasa*.

34. "When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage, called *Paisácha*, is the eighth and the basest.

35. "The gift of daughters in marriage by the sacerdotal class, is most approved when they previously have poured water into the hands of the bridegroom; but the ceremonies of the other classes may be performed according to their several fancies."

The good effects flowing from the first four marriages are declared and the evil effects of the four base ones.

67. "Let the housekeeper perform domestic religious rites, with the nuptial fire, according to law, and the ceremonies of the five great sacraments, and the several acts which must day by day be performed.

68. "A housekeeper has five places of slaughter, or where small living creatures may be slain; his kitchen-hearth, his grindstone, his broom, his pestle and mortar, his water-pot; by using which, he becomes in bondage to sin.

69. "For the sake of expiating offences committed ignorantly in those places mentioned in order, the five great sacraments were appointed by eminent sages to be performed each day by such as keep house.

70. "Teaching and studying the scripture is the sacrament of the Vēda; offering cakes and water, the sacrament of the Manes; an oblation to fire the sacrament of the Deities; rice or other food to living creatures, the sacrament of spirits; receiving guests with honour, the sacrament of men:

71. "Whoever omits not those five great ceremonies, if he have ability to perform them, is untainted by the sins of the five slaughtering-places, even though he constantly reside at home.

72. "But whoever cherishes not five orders of beings, namely, the deities; those who demand hospitality; those, whom he ought by law to maintain; his departed forefathers; and himself; that man lives not even though he breathe."

Very full and definite rules are declared for the various sacraments and oblations to be performed by householders and hospitality is strictly enjoined.

105. "No guest must be dismissed in the evening by a house-keeper, he is sent by the retiring sun; and, whether he came in fit season or unseasonably, he must not sojourn in the house without entertainment.

106. "Let not himself eat any delicate food, without asking his guest

to partake of it: the satisfaction of a guest will assuredly bring the house-keeper wealth, reputation, long life, and a place in heaven."

The performance of oblations to deceased ancestors is treated as a matter of great importance, and rules are given as to the guests to be invited and excluded and places and manner in which the *śrāddha* is to be performed. The kinds of food to be provided, the manner of serving and the precedence to be accorded to the different guests are stated in detail, and the salutations to be made to the guests at the conclusion are given.

278. "As the latter or dark half of the month surpasses, for the celebration of obsequies, the former or bright half, so the latter half of the day surpasses for the same purpose, the former half of it.

279. "The oblation to ancestors must be duly made, even to the conclusion of it with the distribution to the servants, (or even to the close of life), in the form prescribed, by a Brahman wearing his thread on his right shoulder, proceeding from left to right, without remissness, and with *cusa*-grass in his hand.

280. "Obsequies must not be performed by night; since the night is called *rāchast*, or infested by demons; nor while the sun is rising or setting, nor when it has just arisen.

281. "A house-keeper unable to give a monthly repast, may perform obsequies here below, according to the sacred ordinance, only thrice a year, in the seasons of *hémanta*, *grishma*, and *vershā*; but the five sacramenta he must perform daily.

282. "The sacrificial oblation at obsequies to ancestors, is ordained to be made in no vulgar fire; nor should the monthly *śrāddha* of that Brahman, who keeps a perpetual fire, be made on any day, except on that of the conjunction.

283. When a twice-born man, having performed his ablution, offers a satisfaction to the Manes with water only, being unable to give a repast, he gains by that offering all the fruit of a *śrāddha*.

Chapter 4 is entitled, "On Economics; and Private Morals."

1. "Let a Brahman, having dwelt with a preceptor during the first quarter of a man's life, pass the second quarter of human life in his own house, when he has contracted a legal marriage.

2. "He must live with no injury, or with the least possible injury to animated beings, by pursuing those means of gaining subsistence, which are strictly prescribed by law, except in times of distress.

3. "For the sole purpose of supporting life, let him acquire property by those irreproachable occupations, which are peculiar to his class, and unattended with bodily pain.

4. "He may live by *ṛita* and *amṛita*, or, if necessary, by *mṛita*, or *pramṛita*, or even by *satyānṛita*; but never let him subsist by *swavṛitti*:

5. "By *ṛita* must be understood lawful gleanings and gathering by *amṛita*,

what is given unasked; by *mṛita*, what is asked as alms; tillage is called *pramṛita*;

6. "Traffic and money-lending are *satyánrita*; even by them when he is deeply distressed, may he support life; but service for hire is named *swavṛitti*, or dog-living, and of course he must by all means avoid it.

11. "Let him never for the sake of a subsistence, have recourse to popular conversation; let him live by the conduct of a priest, neither crooked, nor artful, nor blended with the manners of the mercantile class.

12. "Let him, if he seek happiness, be firm in perfect content, and check all desire of acquiring more than he possesses; for happiness has its root in content, and discontent is the root of misery."

He is enjoined to perform his daily duties without sloth, avoiding sensual gratification, and reading the holy books.

29. "Let him take care, to the utmost of his power, that no guest sojourn in his house unhonoured with a seat, with food, with a bed, with water, with esculent roots, and with fruit:

30. "But, let him not honour with his conversation such as do forbidden acts; such as subsist like cats, by interested craft; such as believe not the scripture; such as oppugn it by sophisms or such as live like rapacious water-birds.

33. A priest who is master of a family, and pines with hunger, may seek wealth from a king of the military class, from a sacrificer, or his own pupil, but from no person else, unless all other helps fail: thus will he show his respect for the law.

34. "Let no priest, who keeps house, and is able to procure food, ever waste himself with hunger; nor, when he has any substance, let him wear old or sordid clothes.

35. "His hair, nails, and beard being clipped; his passions subdued; his mantle, white, his body pure; let him diligently occupy himself in reading the Vēda, and be constantly intent on such acts, as may be salutary to him.

37. "He must not gaze on the sun, whether rising or setting, or eclipsed, or reflected in water, or advanced to the middle of the sky.

38. "Over a string, to which a calf is tied, let him not step; nor let him run while it rains; nor let him look on his own image in water: this is a settled rule.

39. "By a mound of earth, by a cow, by an idol, by a Brahman, by a pot of clarified butter, or of honey, by a place where four ways meet, and by large trees well known in the district, let him pass with his right hand toward them.

43. Let him neither eat with his wife nor look at her eating, or sneezing, or yawning, or sitting carelessly at her ease."

Many other rules of personal conduct are given which appear quite whimsical.

66. "Let him not use either slippers or clothes, or a sacerdotal string, or an ornament, or a garland, or a waterpot, which before have been used by another.

76. "Let him take his food, having sprinkled his feet with water, but never let him sleep with his feet wet: he, who takes his food with his feet so sprinkled, will attain long life.

77. Let him never advance into a place undistinguishable by his eye, or not easily passable: never let him look at urine or ordure; nor let him pass a river swimming with his arms.

78. "Let not a man, who desires to enjoy long life, stand upon hair, nor upon ashes, bones, nor potsherds, nor upon seeds of cotton, nor upon husks of grain.

79. "Nor let him tarry even under the shade of the same tree with outcasts for great crimes, nor with Chandálas, nor with Puccasas, nor with idiots, nor with men proud of wealth, nor with washermen and other vile persons, nor with Antyavasáyins.

80. "Let him not give even temporal advice to a Súdra; nor, except to his own servant, what remains from his table; nor clarified butter, of which part has been offered to the gods; nor let him in person give spiritual counsel to such a man, nor personally inform him of the legal expiation for his sin:

84. "From a king, not born in the military class, let him accept no gift, nor from such as keep a slaughterhouse, or an oil press, or put out a vintner's flag, or subsist by the gain of prostitutes:

85. "One oil-press is as bad as ten slaughter-houses; one vintner's flag, as ten oil-presses; one prostitute as ten vintner's flags; one such king as ten prostitutes;

86. "With a slaughterer, therefore, who employs ten thousand slaughter-houses, a king, not a soldier by birth, is declared to be on a level; and a gift from him is tremendous.

87. "He, who receives a present from an avaricious king and a transgressor of the sacred ordinances, goes in succession to the following twenty-one hells:

102. "By night, when the wind meets his ear, and by day when the dust is collected, he must not read in the season of rain; since both those times are declared unfit for reading, by such as know when the Vêda ought to be read.

103. "In lightning, thunder and rain, or during the fall of large fireballs on all sides, at such times Manu has ordained the reading of scripture to be deferred till the same time next day.

104. "When the priest perceives those accidents occurring at once, while his fires are kindled for morning and evening sacrifices, then let him know, that the Vêda must not be read; and when clouds are seen gathered out of season.

111. "As long as the scent and unctuousity of perfumes remain on the body of a learned priest, who has partaken of an entertainment, so long he must abstain from pronouncing the texts of the Vēda.

112. "Let him not read lolling on a couch, nor with his feet raised on a bench, nor with his thighs crossed, nor having lately swallowed meat, or the rice and other food on the birth or death of a relation;

113. "Nor in a cloud of dust, nor while arrows whiz, or a lute sounds, nor in either of the twilights, nor at the conjunction, nor on the fourteenth day, nor at the opposition, nor on the eighth day, of the moon:

117. "Be it an animal, or a thing inanimate, or whatever be the gift at a *śrāddha*, let him not, having lately accepted it, read the Vēda; for such a Brahman is said to have his mouth in his hand.

118. "When the town is beset by robbers, or an alarm has been raised by fire, and in all terrors from strange phenomena, let him know that his lecture must be suspended till the due time after the cause of terror be ceased."

Other times and circumstances are mentioned which render it incumbent on the Brahman to abstain from or suspend reading the Vēda.

135. "Never let him who desires an increase of wealth, despise a warrior, a serpent, or a priest versed in scripture, how mean soever they may appear;

136. "Since those three when contemned, may destroy a man; let a wise man therefore always beware of treating those three with contempt,

137. "Nor should he despise even himself on account of previous mis-carriages: let him pursue fortune till death, nor ever think her hard to be attained.

138. "Let him say what is true, but let him say what is pleasing; let him speak no disagreeable truth, nor let him speak agreeable falsehood: this is a primeval rule.

139. "Let him say, "well and good," or let him say, "well," only; but let him not maintain fruitless enmity and altercation with any man.

140. "Let him not journey too early in the morning or too late in the evening, nor too near the mid-day, nor with an unknown companion, nor alone, nor with men of the servile class.

141. "Let him not insult those, who want a limb, or have a limb redundant, who are unlearned, who are advanced in age, who have no beauty, who have no wealth, or who are of an ignoble race.

142. "Let no priest, unwashed after food, touch with his hand a cow, a Brahman, or fire; nor being in good health and unpurified, let him even look at the luminaries in the firmament:

143. "But, having accidentally touched them before his purification, let him ever sprinkle with water, in the palm of his hand, his organs of sensation, all his limbs, and his navel.

159. "Whatever act depends on another man, that act let him carefully

shun; but whatever depends on himself, to that let him studiously attend:

160. "All, that depends on another, gives pain; and all, that depends on himself, gives pleasure; let him know this to be in few words the definition of pleasure and pain.

161. "When an act, neither prescribed nor prohibited, gratifies the mind of him who performs it, let him perform it with diligence; but let him avoid its opposite.

162. "Him, by whom he was invested with the sacrificial thread, him, who explained the Vêda or even a part of it, his mother, and his father, natural or spiritual, let him never oppose; nor priests nor cows, nor persons truly devout."

The following rules of conduct may well be learned and observed by all men.

171. "Though oppressed by penury, in consequence of his righteous dealings, let him never give his mind to unrighteousness; for he may observe the speedy overthrow of iniquitous and sinful men.

172. "Iniquity, committed in this world, produces not fruit immediately, but, like the earth, in due season; and, advancing by little and little, it eradicates the man who committed it.

173. "Yes, iniquity, once committed, fails not of producing fruit to him, who wrought it; if not in his own person, yet in his sons; or, if not in his sons, yet in his grandsons.

174. "He grows rich for a while through unrighteousness; then he beholds good things; then it is, that he vanquishes his foes; but he perishes at length from his whole root upwards.

175. "Let a man continually take pleasure in truth, in justice, in laudable practices, and in purity; let him chastise those, whom he may chastise, in a legal mode; let him keep in subjection his speech, his arm, and his appetite:

176. "Wealth and pleasure, repugnant to law, let him shun; and even lawful acts, which may cause future pain, or be offensive to mankind.

177. "Let him not have nimble hands, restless feet, or voluble eyes; let him not be crooked in his ways; let him not be flippant in his speech, nor intelligent in doing mischief.

178. "Let him walk in the path of good man; the path, in which his forefather walked; while he moves in that path he can give no offense.

179. "With an attendant on consecrated fire, a performer of holy rites, and a teacher of the Vêda, with his maternal uncle, with his guest or a dependent, with a child, with a man either aged or sick, with a physician, with his paternal kindred, with his relations by marriage, and with cousins on the side of his mother,

180. "With his mother herself, or with his father, with his kinswomen,

with his brother, with his son, his wife, or his daughter, and with his whole set of servants let him have no strife.

186. "Though permitted to receive presents, let him avoid a habit of taking them; since, by taking many gifts, his divine light soon fades.

187. "Let no man of sense, who has not fully informed himself of the law concerning gifts of particular things, accept a present, even though he pine with hunger.

188. "The man who knows not that law, yet accepts gold or gems, land, a horse, a cow, food, raiment, oils or clarified butter, becomes mere ashes, like wood consumed by fire:

189. "Gold and gems burn up his nourishment and life; land and a cow, his body; a horse, his eyes; raiment, his skin; clarified butter, his manly strength; oils, his progeny.

190. "A twice-born man, void of true devotion, and not having read the Vêda, yet eager to take a gift, sinks down together with it, as with a boat of stone in deep water.

204. "A wise man should constantly discharge all the moral duties, though he performs not constantly the ceremonies of religion; since he falls low, if, while he performs ceremonial acts only, he discharge not his moral duties."

A long list is given of food which he is prohibited from eating, some for sanitary reasons and others because of contamination; thus he must not eat food on which lice have fallen or that has been designedly touched by the foot or smelled by a cow; nor the food of knaves, harlots, public singers, a eunuch, insane, wrathful, or sick persons, of a physician, hunter, backbiter, false witness or a blacksmith.

222. "Having unknowingly swallowed the food of any such person, he must fast during three days; but, having eaten it knowingly, he must perform the same harsh penance, as if he had tasted any seminal impurity, ordure, or urine.

236. "Let not a man be proud of his rigorous devotion; let him not, having sacrificed, utter a falsehood; let him not though injured, insult a priest; having made a donation, let him never proclaim it.

237. "By falsehood, the sacrifice becomes vain; by pride, the merit of devotion is lost; by insulting priests, life is diminished; and by proclaiming a largess, its fruit is destroyed.

238. "Giving no pain to any creature, let him collect virtue by degrees, for the sake of acquiring a companion to the next world, as the white ant by degrees builds its nest;

239. "For, in his passage to the next world, neither his father nor his mother, nor his wife, nor his son, nor his kinsmen will remain in his company: his virtue alone will adhere to him."

Chapter 5 is entitled, "On Diet, Purification, and Women."

A long list of prohibited foods is given.

19. "The twice-born man who has intentionally eaten a mushroom, the flesh of a tame hog, or a town-cock, a leek, or an onion, or garlick is degraded immediately.

20. "But having undesignedly tasted either of those six things, he must perform the penance *sántapana*, or the *chándráyana*, which anchorets practice; for other things he must fast a whole day.

21. "One of those harsh penances, called *prájápatya*, the twice-born man must perform annually, to purify him from the unknown taint of illicit food; but he must do particular penance for such food intentionally eaten."

This is followed by a list of foods which may be eaten.

39. "By the self-existing in person were beasts created for sacrifice; and the sacrifice was ordained for the increase of this universe: the slaughterer, therefore, of beasts for sacrifice is in truth no slaughterer.

40. "Gramineous plants, cattle, timber trees, amphibious animals, and birds, which have been destroyed for the sacrifice, attain in the next world exalted births.

41. "On a solemn offering to a guest, at a sacrifice, and in holy rites to the manes or to the gods, but on those occasions only, may cattle be slain: this law Manu enacted.

45. "He, who injures animals, that are not injurious, from a wish to give himself pleasure, adds nothing to his own happiness, living or dead;

46. "While he, who gives no creature willingly the pain of confinement or death, but seeks the good of all sentient beings, enjoys bliss without end.

58. "When a child has teethed, and when, after teething, his head has been shorn, and when he has been grit with his thread, and when, being full grown, he dies, all his kindred are impure: on the birth of a child the law is the same.

59. "By a dead body, the *sapindas* are rendered impure in the law for ten days, or until the fourth day, when the bones have been gathered up, or for three days, or for one day only, according to the qualities of the deceased.

60. "Now that the relation of the *sapindas*, or men connected by the funeral cake, ceases with the seventh person, or in the sixth degree of ascent or descent, and that of *samánódacas*, or those connected by an equal oblation of water, ends only, when their births and family names are no longer known."

Rules as to who becomes impure from the death of relatives, the performance of funeral rites and other circumstances are given and the manner of purification prescribed.

96. "The corporal frame of a king is composed of particles from Soma,

Agni, Súra, Pavana, Indra, Cuvéra, Varuna, and Yama, the eight guardian deities of the world.

97. "By those guardians of men in substance is the king pervaded, and he cannot by law be impure; since by those tutelar gods are the purity and impurity of mortals both caused and removed.

98. "By a soldier, discharging the duties of his class, and slain in the field with brandished weapons, the highest sacrifice is, in that instant complete; and so is his purification; this law is fixed.

99. "A priest, having performed funeral rites, is purified by touching water; a soldier, by touching his horse or elephant, or his arms; a husbandman, by touching his goad, or the halter of his cattle; a servant, by touching his staff.

105. "Sacred learning, austere devotion, fire, holy aliment, earth, the mind, water, smearing with cow-dung, air, prescribed acts of religion, the sun and time, are purifiers of embodied spirits;

106. "But of all pure things, purity in acquiring wealth, is pronounced the most excellent; since he, who gains wealth with clean hands, is truly pure; not he who is purified merely with earth and water,

107. "By forgiveness of injuries, the learned are purified; by liberality, those who have neglected their duty; by pious meditation, those who have secret faults; by devout austerity, those who best know the Véda."

After this follow rules for the purification of inanimate things with water, ashes, earth, fire and in various ways.

129. "The hand of an artist employed in his art is always pure; so is every vendible commodity, when exposed to sale; and that food is always clean, which a student in theology has begged and received; such is the sacred rule.

147. "By a girl, or by a young woman, or by a woman advanced in years, nothing must be done even in her own dwelling place, according to her mere pleasure.

148. "In childhood must a female be dependent on her father; in youth, on her husband; her lord being dead, on her sons; if she have no sons, on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign; a woman must never seek independence.

149. "Never let her wish to separate herself from her father, her husband, or her sons; for, by a separation from them, she exposes both families to contempt.

150. "She must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses.

151. "Him, to whom her father has given her, or her brother with the paternal assent, let her obsequiously honour, while he lives; and, when he dies, let her never neglect him,

152. "The recitation of holy texts, and the sacrifice ordained by the lord of creatures, are used in marriages for the sake of procuring good fortune to brides; but the first gift, or troth plighted, by the husband, is the primary cause and origin of marital dominion.

153. "When the husband has performed the nuptial rites with texts from the Vêda, he gives bliss continually to his wife here below, both in season and out of season; and he will give her happiness in the next world.

154. "Though inobservant of approved usages, or enamored of another woman, or devoid of good qualities, yet a husband must constantly be revered as a god by a virtuous wife.

155. "No sacrifice is allowed to women apart from their husbands, no religious rite, no fasting; as far only as a wife honours her lord, so far she is exalted in heaven.

156. "A faithful wife, who wishes to attain in heaven the mansion of her husband, must do nothing unkind to him, be he living or dead.

157. "Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man.

158. "Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband.

159. "Many thousands of Brahmans, having avoided sensuality from their early youth, and having left no issue in their families, have ascended, nevertheless, to heaven;

160. "And, like those abstemious men, a virtuous wife, ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity:

161. "But, a widow, who, from a wish to bear children, slights her deceased husband by marrying again, brings disgrace on herself here below, and shall be excluded from the seat of her lord.

162. "Issue, begotten on a woman by any one other than her husband, is here declared to be no progeny of hers; no more than a child begotten on the wife of another man, belongs to the begetter: nor is a second husband allowed, in any part of this code, to a virtuous woman.

167. "A twice-born man versed in sacred ordinances, must burn, with hallowed fire and fir implements of sacrifice, his wife dying before him, if she was of his own class, and lived by these rules:

168. "Having thus kindled sacred fires, and performed funeral rites to his wife, who died before him, he may marry again, and again light the nuptial fire."

Chapter 6 is entitled, "On Devotion; or on the Third and Fourth Orders."

2. "When the father of a family perceives his muscles become flaccid

and his hair gray, and sees the child of his child, let him then seek refuge in a forest:

3. "Abandoning all food eaten in towns, and all his household utensils, let him repair to the lonely woods, committing the care of his wife to her sons; or accompanied by her, if she choose to attend him.

5. "Let him take up consecrated fire, and all his domestic implements, of making oblations to it, and, departing from the town to the forest, let him dwell in it with complete power over his organs of sense and of action.

5. "With many sorts of pure food, such as holy sages used to eat, with green herbs, roots, and fruit, let him perform the five great sacraments before mentioned, introducing them with due ceremonies.

6. "Let him wear a black antelope hide, or a vesture of bark; let him bathe evening and morning; let him suffer the hairs of his head, his beard, and his nails to grow continually,

7. "From such food, as himself may eat, let him, to the utmost of his power, make offerings and give alms; and with presents of water, roots, and fruit, let him honour those who visit his hermitage.

8. "Let him be constantly engaged in reading the Vēda; patient of all extremities, universally benevolent, with a mind intent on the Supreme Being; a perpetual giver, but no receiver of gifts; with tender affection for all animated bodies.

9. "Let him, as the law directs, make oblations on the hearth with three sacred fires; not omitting in due time the ceremonies to be performed at the conjunction and opposition of the moon.

10. "Let him also perform the sacrifices ordained in honor of the lunar constellations, make the prescribed offering of new grain, and solemnize holy rites every four months, and at the winter and summer solstices.

13. "Let him eat green herbs, flowers, roots, and fruit, that grow on earth or in water, and the productions of pure trees, and oils formed in fruits.

14. "Honey and fresh meat he must avoid, and all sorts of mushrooms, the plant *bhūstrīna*, that named *sigruca*, and the fruit of the *sleshmataca*.

16. "Let him not eat the produce of ploughed land, though abandoned by any man, who owns it, nor fruit and roots produced in a town, even though hunger oppress him.

22. "Let him slide backwards and forwards on the ground; or let him stand a whole day on tip toe; or let him continue in motion rising and sitting alternatively; but at sunrise, at noon, and at sunset, let him go to the waters and bathe.

23. "In the hot season, let him sit exposed to five fires, four blazing around him with the sun above; in the rains, let him stand uncovered, without even a mantle, where the clouds pour the heaviest showers; in

the cold season let him wear humid vesture; and let him increase by degrees the austerity of his devotion:

24. "Performing his ablution at the three Savanas, let him give satisfaction to the manes and to the gods; and, enduring harsher and harsher mortifications, let him dry up his bodily frame.

25. "Then, having deposited his holy fires, as the law directs, in his mind, let him live without external fire, without a mansion, wholly silent, feeding on roots and fruit;

26. "Not solicitous for the means of gratifications, chaste as a student, sleeping on the bare earth, in the haunts of pious hermits, without one selfish affection, dwelling on roots of trees.

27. "From devout Brahmans let him receive alms to support life, or from other housekeepers of twice-born classes, who dwell in the forests:

28. "Or the hermit may bring food from a town, having received it in a basket of leaves, in his naked hand, or in a postsherd; and then let him swallow eight mouthfuls.

32. "A Brahman, having shuffled off his body by any of those modes, which great sages practised, and becoming void of sorrow and fear, rises in exaltation in the divine essence.

33. "Having thus performed religious acts in a forest during the third portion of his life, let him become a *Sannyási* for the fourth portion of it, abandoning all sensual affections, and wholly reposing in the Supreme Spirit:

34. "The man, who has passed from order to order, has made oblations to fire on his respective changes of state, and has kept his members in subjection, but, tired with so long a course of giving alms and making offerings, thus reposes himself entirely on God, shall be raised after death to Glory.

44. "An earthen water pot, the roots of large trees, coarse vesture, total solitude, equanimity toward all creatures, these are the characteristics of a Brahman set free.

45. "Let him not wish for death; let him not wish for life; let him expect his appointed time, as a hired servant expects his wages.

46. "Let him advance his foot purified by looking down, lest he touch anything impure; let him drink water purified by straining with a cloth, lest he hurt some insect; let him, if he chuse to speak, utter words purified by truth; let him by all means keep his heart purified.

47. "Let him bear a reproachful speech with patience; let him speak reproachfully to no man; let him not, on account of his frail and feverish body, engage in hostility with any one living.

48. "With an angry man let him not in his turn be angry; abused, let him speak mildly; nor let him utter a word relating to vain illusory things and confined within seven gates, the five organs of sense, the chart and the intellect; or this world with three above and three below it.

49. "Delighted with meditating on the Supreme Spirit, sitting fixed in such meditation, without needing anything earthly, without one sensual desire, without any companion but his own soul, let him live in this world seeking the bliss of the next.

72. "Let him thus, by such suppressions of breath, burn away his offenses; by reflecting intensely on the steps of ascent to beatitude, let him destroy sin; by coercing his members, let him restrain all sensual attachments; by meditating on the intimate union of his own soul and the divine essence, let him extinguish all qualities repugnant to the nature of God.

75. "By injuring nothing animated, by subduing all sensual habits, by devout rites ordained in the Vēda, and by rigorous mortifications, men obtain, even in this life, the state of beatitude.

76. "A mansion with bones for its rafters and beams; with nerves and tendons, for cords; with muscles and blood, for mortar; with skin for its outward covering; filled with no sweet perfume, but loaded with feces and urine;

77. "A mansion infested by age and by sorrow, the seat of malady, harassed with pains, haunted with the quality of darkness, and incapable of standing alone; such a mansion of the vital soul let its occupier always cheerfully quit:

78. "As a tree leaves the bank of a river, when it falls in, or as a bird leaves the branch of a tree at his pleasure, thus he, who leaves his body by necessity or by legal choice, is delivered from the ravaging shark, or crocodile, of the world.

79. "Letting his good acts descend (by the law of the Vēda) to those, who love him, and his evil deeds, to those, who hate him, he may attain, through devout meditation, the eternal spirit.

87. "The student, the married man, the hermit, and the anchorite are the offspring, though in four orders, of married men keeping house.

88. "And all, or even any, of those orders, assumed in their turn, according to the sacred ordinances, lead the Brahman, who acts by the preceding rules, to the highest mansion:

89. "But of all those, the housekeeper, observing the regulations of the *Sruti* and *Smṛiti*, may be called the chief; since he supports the three other orders.

90. "As all rivers, female and male, run to their determined places in the sea, thus men of all other orders, repair to their fixed place in the mansion of the house-keeper.

91. "By Brahmans, placed in these four orders, a tenfold system of duties must ever be sedulously practiced.

92. "Content, returning good for evil, resistance to sensual appetites, abstinence from illicit gain, purification, coercion of the organs, knowledge of scripture, knowledge of the Supreme Spirit, veracity, and freedom from wrath, form their tenfold system of duties.

93. "Such Brahmans, as attentively read the ten precepts of duty and after reading, carefully practice them, attain the most exalted condition.

94. "A Brahman, having practiced, with organs under command, this tenfold system of duty, having heard the Upanishads explained, as the law directs, and who has discharged his three debts, may become an anchorite, in the house of his son, according to the Vêda;

95. "And, having abandoned all ceremonial acts, having expiated all his offenses, having obtained a command over his organs, and having perfectly understood the scripture, he may live at his ease, while the household affairs are conducted by his son."

Chapter 7 is entitled, "On Government, and Public Law; or on the Military Class. The spirit of this chapter will be found to differ materially from that of prior ones. It deals with the practical problems of government by a king.

2. "By a man of the military class, who has received in due form the investiture which the Vêda prescribes, great care must be used to maintain the whole assemblage of laws.

3. "Since, if the world has no king, it would quake on all sides through fear, the ruler of this universe, therefore, created a king, for the maintenance of this system, both religious and civil,

4. "Forming him of eternal particles drawn from the substance of Indra, Pavana, Yama, Sûrya, of Agni, and Varuna, of Chandra and Cuvêra:

5. "And since a king was composed of particles drawn from those chief guardian deities, he consequently surpasses all mortals in glory.

6. "Like the sun, he burns eyes and hearts; nor can any human creature on earth even gaze on him.

7. "He is fire and air; he, both sun and moon; he, the god of criminal justice; he, the genius of wealth; he, the regent of waters; he, the lord of the firmament.

8. "A king, even though a child, must not be treated lightly, from an idea that he is a mere mortal: no, he is a powerful divinity, who appears in a human shape.

9. "Fire burns only one person, who carelessly goes too near it; but the fire of a king in wrath burns a whole family, with all their cattle and goods.

10. "Fully considering the business before him, his own force, and the place, and the time, he assumes in succession all sorts of forms, for the sake of advancing justice.

11. "He, sure, must be the perfect essence of majesty, by whose favor Abundance rises on her lotos, in whose valour dwells conquest; in whose anger, death.

12. "He, who shews hatred of the king, through delusion of mind,

will certainly perish, for speedily will the king apply his heart to the man's perdition.

13. "Let the king prepare a just compensation for the good and a just punishment for the bad: the rule of strict justice let him never transgress.

14. "For his use Brahma formed in the beginning of time the genius of punishment, with a body of pure light, his own son, even abstract criminal justice, the protector of all created things.

15. "Through fear of that genius, all sentient beings, whether fixed or locomotive, are fitted for natural enjoyments and swerve not for duty.

16. "When the king, therefore, has fully considered place and time, and his own strength, and the divine ordinance, let him justly inflict punishment on all those, who act unjustly.

17. "Punishment is an active ruler, he is the true manager of public affairs; he is the dispenser of laws; and wise men call him the sponsor of all the four orders for the discharge of their several duties.

18. "Punishment governs all mankind; punishment alone preserves them; punishment wakes, while their guards are asleep; the wise consider punishment as the perfection of justice.

19. "When rightly and considerably inflicted, it makes all the people happy; but, inflicted without full consideration, it wholly destroys them all.

26. "Holy sages consider as a fit dispenser of criminal justice, that king, who invariably speaks truth, who duly considers all cases, who understands the sacred books, who knows the distinction of virtue, pleasure, and riches;

27. "Such a king, if he justly inflict legal punishments, greatly increases those three means of happiness; but punishment itself shall destroy a king, who is crafty, voluptuous, and wrathful;

28. "Criminal justice, the bright essence of majesty, and hard to be supported by men with unimproved minds, eradicates a king, who swerves from his duty, together with all his race:

29. "Punishment shall overtake his castles, his territories, his peopled land, with all fixed and movable things, that exist on it: even the gods and the sages, who lose their oblations, will be afflicted and ascend to the sky.

30. "Just punishment cannot be inflicted by an ignorant and covetous king, who has no wise and virtuous assistant, whose understanding has not been improved, and whose heart is addicted to sensuality:

31. "By a king, wholly pure, faithful to his promise, observant of the scriptures, with good assistants and sound understanding, may punishment be justly inflicted.

32. "Let him in his own domains act with justice, chastise foreign foes with rigour, behave without duplicity to his affectionate friends, and with lenity to Brahmans.

37. "Let the king, having risen at early dawn, respectfully attend to Brahmans, learned in the three Védas, and in the science of ethics; and by their decision let him abide.

38. "Constantly must he show respect to Brahmans, who have grown old, both in years and in piety, who know the scriptures, who in body and mind are pure; for he, who honours the aged, will perpetually be honoured even by cruel demons:

39. "From them, though he may have acquired modest behavior by his own good sense and by study, let him continually learn habits of modesty and composure; since a king, whose demeanor is humble and composed, never perishes.

40. "While through want of such humble virtue, many kings have perished with all their possessions, and, through virtue united with modesty, even hermits have obtained kingdoms.

43. "From those, who know the three Védas, let him learn the triple doctrine comprised in them, together with the primeval science of criminal justice and sound policy, the system of logic and metaphysics, and sublime theological truths; from the people he must learn the theory of agriculture, commerce, and other practical arts.

44. "Day and night must he strenuously exert himself to gain complete victory over his own organs; since that king alone whose organs are completely subdued, can keep his people firm to their duty.

45. "With extreme care let him shun eighteen vices, ten proceeding from love of pleasure, eight springing from wrath, and all ending in misery.

46. "Since a king, addicted to vices arising from love of pleasure must lose both his wealth and his virtue, and, addicted to vices arising from anger, he may lose even his life from the public resentment.

47. "Hunting, gaming, sleeping by day, censuring rivals, excesses with woman, intoxication, singing, instrumental music, dancing, and useless travel, are the tenfold set of vices produced by love of pleasure:

48. "Talebearing, violence, insidious wounding, envy, detraction, unjust seizure of property, reviling, and open assault are in like manner the eightfold set of vices, to which anger gives birth.

54. "The king must appoint seven or eight ministers, who must be sworn by touching a sacred image and the like; men, whose ancestors were servants of kings; who are versed in the holy books; who are personally brave; who are skilled in the use of weapons; and whose lineage is noble.

56. "Let him perpetually consult with those ministers on peace and war, on his forces, on his revenues, on the protection of his people, and on the means of bestowing aptly the wealth which he has acquired:

57. "Having ascertained the several opinions of his counsellors first

apart and then collectively, let him do what is most beneficial for him in publick affairs.

58. "To one learned Brahman, distinguished among them all, let the king impart his momentous counsel, relating to six principal articles.

59. "To him, with full confidence, let him intrust all transactions; and with him, having taken his final resolution, let him begin all his measures.

61. "As many officers as the due performance of his business requires, not slothful men, but active, able, and well instructed, so many and no more, let him appoint.

63. "Let him likewise appoint an ambassador versed in all the *Sāstras*, who understands hints, external signs, and actions, whose hand and heart are pure, whose abilities are great and whose birth was illustrious.

64. "That royal ambassador is applauded most, who is generally beloved, pure within and without, dexterous in business, and endued with an excellent memory; who knows countries and times, is handsome, intrepid, and eloquent.

65. "The forces of the realm must be immediately regulated by the commander in chief; the actual infliction of punishment, by the officers of criminal justice; the treasury and the country, by the king himself; peace and war, by the ambassador.

88. "Never to recede from combat, to protect the people, and to honour the priest, is the highest duty of kings and insures their felicity.

89. "Those rulers of the earth, who, desirous of defeating each other, exert their utmost strength in battle, without ever averting their faces, ascend after death directly to heaven.

90. "Let no man, engaged in combat, smite his foe with sharp weapons concealed in wood, nor with arrows mischievously barbed, nor with poisoned arrows, nor with darts blazing with fire;

91. "Nor let him in a car or on horseback strike his enemy alighted on the ground; nor an effeminate man; nor one, who sues for life with closed palms; nor one, whose hair is loose and obstructs his sight; nor one who sits down fatigued; nor one who says, "I am thy captive;"

92. "Nor one, who sleeps; nor one, who has lost his coat of mail; nor one, who is naked; nor one, who is disarmed; nor one, who is a spectator; but not a combatant; nor one, who is fighting with another man.

93. "Calling to mind the duty of honourable men, let him never slay one, who has broken his weapon; nor one, who is afflicted with private sorrow; nor one, who has been grievously wounded; nor one, who is terrified; nor one, who turns his back.

94. "The soldier indeed, who fearing and turning his back, happens to be slain by his foes in an engagement, shall take upon himself all the sin of his commander, whatever it be.

95. "And the commander shall take to himself the fruit of all the good conduct, which the soldier, who turns his back and is killed, had previously stored up for a future life.

96. "Cars, horses, elephants, umbrellas, habiliments, except the jewels which may adorn them, grain, cattle, women, all sorts of liquids and metals, except gold and silver, are the lawful prizes of the man who takes them in war;

97. "But of those prizes, the captors must lay the most valuable before the king; such is the rule in the Vêda concerning them; and the king should distribute among the whole army what has not been separately taken."

Rules to be learned in preparing for war are then given:

107. "When he thus has prepared himself for conquest, let him reduce all opposers to submission by negotiation and three other expedients, namely, presents, division, and force of arms:

108. "If they cannot be restrained by the three first methods, then let him, firmly but gradually, bring them to subjection by military force.

109. "Among those four modes of obtaining success, the wise prefer negotiation and war for the exaltation of kingdoms.

110. "As a husbandman plucks up weeds and preserves his corn, thus let a king destroy his opponents and secure his people.

111. "That king, who, through weakness of intellect, rashly oppresses his people, will, together with his family, be deprived both of kingdom and life.

114. "Let him place, as the protectors of his realm, a company of guards, commanded by an approved officer, over two, three, five, or a hundred districts, according to their extent.

115. "Let him appoint a lord of one town with its district, a lord of ten towns, a lord of twenty, a lord of a hundred, and a lord of a thousand.

116. "Let the lord of one town certify of his own accord to the lord of ten towns any robberies, tumults, or other evils, which arise in his district, and which he cannot suppress; and the lord of ten, to the lord of twenty:

117. "Then let the lord of twenty towns notify them to the lord of a hundred; and let the lord of a hundred transmit the information himself to the lord of a thousand townships.

118. "Such food, drink, wood, and other articles, as by law should be given each day to the king by the inhabitants of the township, let the lord of one town receive as his perquisite:

119. "Let the lord of ten towns enjoy the produce of two ploughlands, or as much ground as can be tilled with two ploughs, each drawn by six bulls; the lord of twenty that of ten ploughlands; the lord of a

hundred, that of a village or small town; the lord of a thousand that of a large town.

120. "The affairs of those townships, either jointly or separately transacted, let another minister of the king inspect; who should be well affected and by no means remiss,

121. "In every large town or city, let him appoint one superintendent of all affairs, elevated in rank, formidable in power, distinguished as a planet among stars:

122. "Let that governor from time to time survey all the rest in person, and, by means of his emissaries, let him perfectly know their conduct in their several districts.

123. "Since the servants of the king, whom he has appointed guardians of districts, are generally knaves, who seize what belong to other men, from such knaves let him defend his people:

124. "Of such evil-minded servants, as wring wealth from subjects attending them on business, let the king confiscate all the possessions, and banish them from his realm.

125. "For women, employed in the service of the king, and for his whole set of menial servants, let him daily provide a maintenance, in proportion to their station and to their work:

126. "One *pana* of copper must be given each day as wages to the lowest servant, with two cloths for apparel every half-year, and a *dróna* of grain every month; to the highest must be given wages in the ratio of six to one.

127. "Having ascertained the rates of purchase and sale, the length of the way, the expenses of food and condiments, the charges of securing the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes on their saleable commodities.

128. "After a full consideration, let the king so levy those taxes continually in his dominions, that both he and the merchant may receive a just compensation for their several acts.

129. "As the leech, the suckling calf, and the bee, take their natural food by little and little, thus must the king draw from his kingdom an annual revenue.

130. "Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part may be taken by the king; of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it.

131. "He may also take a sixth part of the clear annual increase of trees, flesh-meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit;

132. "Of gathered leaves, potherbs, grass, utensils, made with leather or cane, earthen pots, and all things made of stone.

133. "A king even though dying with want, must not receive any tax

from a Brahman learned in the Védas, nor suffer such a Brahman, residing in his territories, to be afflicted with hunger.

149. "At the time of consultation, let him remove the stupid, the dumb, the blind, and the deaf, talking birds, decrepit old men, women, and infidels, the diseased and the maimed;

150. "Since those, who are disgraced in this life by reason of sins formerly committed, are apt to betray secret council; so are talking birds; and so above all are women; them he must, for that reason, diligently remove."

Many rules for the prudent management of military affairs are given, so that wars may be prosecuted at favorable times, and an attack from an enemy of superior force be avoided, and that alliances may be formed with those whose aid is desirable and not dangerous. Rules also are given for the management of forces in battle which do not appear of great practical utility.

197. "Let him secretly bring over to his party all such leaders as he can safely bring over; let him be informed of all that his enemies are doing; and when a fortunate moment is offered by heaven, let him give battle, pushing on to conquest and abandoning fear:

198. "Yet he should be more sedulous to reduce his enemy by negotiation, by well applied gifts, and by creating divisions, using either all or some of those methods, than by hazarding at any time decisive action.

199. "Since victory or defeat are not surely foreseen on either side, when two armies engage in the field; let the king then, if other expedients prevail, avoid a pitched battle.

200. "But, should there be no means of applying the three before-mentioned expedients, let him, after due preparation, fight so valiantly that his enemy may be totally routed.

201. "Having conquered a country, let him respect the deities adored in it, and their virtuous priests; let him also distribute largesses to the people, and cause a full exemption from terror to be loudly proclaimed.

202. "When he has perfectly ascertained the conduct and intentions of all the vanquished, let him fix in that country a prince of the royal race, and give him precise instructions.

203. "Let him establish the laws of the conquered nation as declared in their books; and let him gratify the new prince with gems and other precious gifts.

204. "The seizure of desirable property, though it cause hatred, and the donation of it, though it cause love, may be laudable or blameable on different occasions:

205. "All this conduct of human affairs is considered as dependent on acts ascribed to the deity, and on acts ascribed to men; now the

operations of the deity cannot be known by any intenseness of thought, but those of men may be clearly discovered."

The king is admonished to take precautions for his own personal safety against assassination and poison and to be constantly on his guard to frustrate the schemes of his enemies.

Chapter 8 is "On Judicature; and on Law, private and Criminal."

1. "A king, desirous of inspecting judicial proceedings, must enter his court of justice, composed and sedate in his demeanor, together with Brahmans and counsellors, who know how to give him advice.

2. "There, either sitting or standing, holding forth his right arm, without ostentation in his dress and ornaments, let him examine the affairs of litigant parties.

3. "Each day let him decide causes, one after another, under the eighteen principal titles of law, by arguments and rules drawn from local usages, and from written codes:

4. "Of those titles, the first is debt, on loans for consumption, the second, deposits, and loans for use; the third, sale without ownership; the fourth, concerns among partners; the fifth, subtraction of what has been given;

5. "The sixth, non-payment of wages or hire; the seventh, non-performance of agreements; the eighth, rescission of sale and purchase; the ninth, disputes between master and servant;

6. "The tenth, contests on boundaries; the eleventh and twelfth, assault and slander; the thirteenth, larceny; the fourteenth, robbery and other violence; the fifteenth, adultery;

7. "The sixteenth, altercation between man and wife, and their several duties; the seventeenth, the law of inheritance; the eighteenth, gaming with dice and with living creatures; these eighteen titles of law are settled as the ground work of all judicial procedure in this world.

8. "Among men, who contend for the most part on the titles just mentioned, and on a few miscellaneous heads not comprised under them, let the king decide causes justly, observing primeval law;

9. "But when he cannot inspect such affairs in person, let him appoint, for the inspection of them, a Brahman of eminent learning;

10. "Let that chief judge, accompanied by three assessors, fully consider all causes brought before the king; and, having entered the court room, let him sit or stand, but not move backwards and forwards.

11. "In whatever country these Brahmans, particularly skilled in the three several Védas, sit together with the very learned Brahman appointed by the king, the wise call that assembly the court of Brahma with four faces.

12. "When justice, having been wounded by iniquity, approaches the court, and the judges extract not the dart, they also shall be wounded by it.

13. "Either the court must not be entered by judges, parties, and witnesses, or law and truth must be openly declared: that man is criminal who either says nothing, or says what is false and unjust.

14. "When justice is destroyed by iniquity, and truth by false evidence, the judges, who basely look on without giving redress, shall also be destroyed.

18. "Of injustice in decisions, one-quarter falls on the party in the cause; one-quarter on his witnesses; one-quarter on all the judges; and one-quarter on the king;

20. "A Brahman supported only by his class, and one barely reputed a Brahman, but without performing any sacerdotal acts, may, at the king's pleasure, interpret the law to him, so may the two middle classes; but a Súdra, in no case whatever.

23. "Let the king or his judge, having seated himself on the bench, his body properly clothed and his mind attentively fixed, begin with long reverence to the deities, who guard the world; and then let him enter on the trial of causes:

24. "Understanding what is expedient or inexpedient, but considering only what is law or not law, let him examine all disputes between parties, in the order of their several classes.

25. "By external signs let him see through the thoughts of men; by their voice, colour, countenance, limbs, eyes, and action:

26. "From the limbs, the look, the motion of the body, the gesticulation, the speech, the changes of the eye and the face, are discovered the internal workings of the mind.

27. "The property of a student and an infant, whether by descent or otherwise, let the king hold in his custody, until the owner shall have ended his studentship, or until his infancy shall have ceased in his sixteenth year.

28. "Equal care must be taken of barren women, of women without sons, whose husbands have married other wives, of women without kindred, or whose husbands are in distant places, of widows true to their lords, and of women afflicted with illness.

29. "Such kinsmen, as, by any pretence, appropriate the fortunes of women during their lives, a just king must punish with a severity due to thieves.

34. "Property lost by one man, and found by another, let the king secure, by committing it to the care of trustworthy men; and those, whom he shall convict of stealing it, let him cause to be trampled on by an elephant.

41. "A king, who knows the revealed law, must enquire into the particular laws of classes, the laws of usages of districts, the customs of traders, and the rules of certain families,, and establish their peculiar laws, if they be not repugnant to the law of God;

42. "Since all men, who mind their own customary ways of proceeding

and are fixed in the discharge of their several duties, become united by affection with the people at large, even though they dwell far asunder.

43. "Neither the king himself nor his officers must ever promote litigation: nor ever neglect a law-suit instituted by others.

47. "When a creditor sues before him for the recovery of his right from a debtor, let him cause the debtor to pay what the creditor shall prove due.

48. "By whatever lawful means a creditor may have gotten possession of his own property, let the king ratify such payment by the debtor, though obtained even by compulsory means.

49. "By the mediation of friends, by suit in court, by artful management, or by distress, a creditor may recover the property lent; and, fifthly, by legal force.

50. "That creditor, who recovers his right from his debtor, must not be rebuked by the king for retaking his own property.

51. "In a suit for a debt, which the defendant denies, let him award payment to the creditor of what, by good evidence, he shall prove due, and exact a small fine, according to the circumstances of the debtor.

52. "On the denial of a debt, which the defendant has in court been required to pay, the plaintiff must call a witness, who was present at the place of the loan, or produce other evidence, as a note and the like.

53. "The plaintiff, who calls a witness not present at the place, where the contract was made, or, having knowingly called him, disclaims him as his witness; or who perceives not, that he asserts confused and contradictory facts;

54. "Or who, having stated what he designs to prove, varies afterwards from his case, or who, being questioned on a fact, which he had before admitted, refuses to acknowledge that very fact;

55. "Or who has conversed with the witness in a place unfit for such conversation; or who declines answering a question properly put; or who departs from the court;

56. "Or who being ordered to speak, stands mute; or who proves not what he has alleged; or who knows not what is capable or incapable of proof; such a plaintiff shall fail in that suit;

57. "Him who has said "I have witnesses," and, being told to produce them, produces them not, the judge must on this account declare nonsuited.

58. "If the plaintiff delay to put in his plaint; he may, according to the nature of the case, be corporally punished or justly amerced; and, if the defendant plead not within three fortnights, he is by law condemned.

59. "In the double of that sum, which the defendant falsely denies, or on which the complainant falsely declares, shall these two men, wilfully offending against justice, be fined by the king.

60. "When a man has been brought into court by a suitor for property, and, being called on to answer, denies the debt, the cause should be decided by the Brahman who represents the king, having heard three witnesses at least.

61. "What sort of witnesses must be produced by creditors and others on the trial of causes, I will comprehensively declare; and in what manner those witnesses must give true evidence.

62. "Married house-keepers, men with male issue, inhabitants of the same district, either of the military, the commercial, or the servile class, are competent, when called by the party, to give their evidence; not any persons indiscriminately, except in such cases of urgency as will soon be mentioned.

63. "Just and sensible men of all the four classes may be witnesses on trials; men, who know their whole duty, and are free from convetousness: but men of an opposite character the judge must reject.

64. "Those must not be admitted who have a pecuniary interest; nor familiar friends, nor menial servants; nor enemies; nor men formerly perjured; nor persons grievously diseased, nor those, who have committed heinous offenses.

65. "The king cannot be made a witness; nor cooks, and the like mean artificers; nor public dancers and singers; nor a priest of deep learning in scripture; nor a student in theology; nor an anchorite secluded from all worldly connexions;

66. "Nor one wholly dependent; nor one of bad fame; nor one, who follows a cruel occupation; nor one, who acts openly against the law; nor a decrepit old man; nor a child; nor one man only; unless he be distinguished for virtue; nor a wretch of the lowest mixed class; nor one, who has lost the organs of sense;

67. "Nor one extremely aggrieved; nor one intoxicated; nor a madman; nor one tormented with hunger or thirst; nor one oppressed by fatigue; nor one excited by lust; nor one inflamed with wrath; nor one who has been convicted of theft.

68. "Women should regularly be witnesses for women; twice-born for men alike twice-born; good servants and mechanics, for servants and mechanics; and those of the lowest race, for those of the lowest;

69. "But any person whatever, who has positive knowledge of transactions in the private apartments of a house, or in a forest, or at a time of death, may give evidence between the parties:

70. "On failure of witnesses duly qualified, evidence may in such cases be given by a woman, by a child, or by an aged man, by a pupil, by a kinsman, by a slave, or by a hired servant;

71. "Yet of children, of old men, and of the diseased, who are all apt to speak untruly, the judge must consider the testimony as weak; and much more, that of men with disordered minds:

72. "In all cases of violence, of theft and adultery, of defamation and assault, he must not examine too strictly the competence of witnesses.

73. "If there be contradictory evidence, let the king decide by the plurality of credible witnesses; if equality in number, by superiority in

virtue; if parity in virtue, by the testimony of such twice-born men, as have best performed public duties.

74. "Evidence of what has been seen, or of what has been heard, as slander and the like, given by those who saw or heard it, is admissible; and a witness who speaks truth in those cases, neither deviates from virtue nor loses his wealth;

75. "But a witness, who knowingly says anything, before an assembly of good men, different from what he had seen or heard, shall fall headlong, after death, into a region of horror, and he debarred from heaven.

76. "When a man sees or hears anything, without being then called upon to attest it, yet, if he be afterwards examined as a witness, he must declare it, exactly as it was seen, and as it was heard.

77. "One man, untainted with covetousness and other vices, may in some cases be the sole witness, and will have more weight than many women; because female understandings are apt to waver; or than many other men, who have been tarnished with crimes.

78. "What witnesses declare naturally, or without bias, must be received on trials; but what they improperly say, from some unnatural bent, is inapplicable to the purposes of justice.

79. "The witnesses being assembled in the middle of the court-room, in the presence of the plaintiff and the defendant, let the judge examine them, after having addressed them together in the following manner:

80. "What ye know to have been transacted in the matter before is, between the parties reciprocally, declare at large and with truth; for your evidence in this cause is required;"

The most severe penalties in the present and future incarnations are denounced against false witnesses and fame and beatitude promised to the truthful.

103. "In some cases, a giver of false evidence from a pious motive, even though he know the truth, shall not lose a seat in heaven: such evidence wise men call the speech of the gods.

104. "Whenever the death of a man, who had not been a grievous offender, either of the servile, the commercial, the military or the sacerdotal class, would be occasioned by true evidence, from the known rigor of the king, even though the fault arose from inadvertence or error, falsehood may be spoken: it is even preferable to truth.

105. "Such witnesses must offer, as oblations to Saraswatī, cakes of rice and milk addressed to the goddess of speech; and thus will they fully expiate that venial sin of benevolent falsehood.

106. "Or such a witness may pour clarified butter into the holy fire, according to the sacred rule, hallowing it with the texts called *cūshmāndā*, or with those which relate to Varuna, beginning with *ud*; or with the three texts appropriated to the water gods.

107. "A man who labours not under illness, yet comes not to give evidence in cases of loans and the like, within three fortnights after

due summons, shall take upon himself the whole debt, and pay a tenth part of it as a fine to the king.

108. "The witness, who has given evidence, and to whom, within seven days after, a misfortune happens from disease, fire, or the death of a kinsman, shall be condemned to pay the debt and a fine.

109. "In cases where no witness can be had, between two parties opposing each other, the judge may acquire a knowledge of the truth by the oath of the parties; or if he cannot otherwise perfectly ascertain it.

113. "Let a judge cause a priest to swear by his veracity; a soldier, by his horse, or elephant, and his weapons; a merchant, by his kine, grain, and gold; a mechanic or servile man, by imprecating on his own head, if he speak falsely, all possible crimes;

114. "Or, on great occasions, let him cause the party to hold fire, or to dive under water, or severally to touch the heads of his children and wife;

139. "A debt being admitted by the defendant, he must pay five in the hundred, as a fine to the king; but, if it be denied and proved, twice as much, this law was enacted by Manu.

140. "A lender of money may take, in addition to his capital, the interest allowed by Vasisht'ha, that is, an eighth part of a hundred, or one and a quarter, by the month, if he have a pledge;

141. "Or, if he have no pledge, he may take two in the hundred by the month, remembering the duty of good men; for, by thus taking two in the hundred, he becomes not a sinner for gain.

142. "He may thus take in proportion to the risk, and in the direct order of the classes, two in the hundred from a priest, three from a soldier, four from a merchant, and five from a mechanic or servile man, but never more, as interest, by the month.

143. "If he takes a beneficial pledge, or a pledge to be used for his profit, he must have no other interest on the loan; nor, after a great length of time, or when the profits have amounted to the debt, can he give or sell such a pledge, though he may assign it in pledge to another.

144. "A pledge to be kept only must not be used by force, that is, against consent: the pawnee so using it must give up his whole interest, or must satisfy the owner, if it be spoiled or worn out, by paying him the original price of it; otherwise, he commits a theft of the pawn.

145. "Neither a pledge without limit, nor a deposit, are lost to the owner by lapse of time: they are both recoverable, though they have long remained with the bailee.

146. "A milch cow, a camel, a riding-horse, a bull or other beast, which has been sent to be tamed for labour, and other things used with friendly assent, are not lost by length of time to the owner.

147. "In general, whatever chattel the owner sees enjoyed by others for ten years, while, though present, he says nothing, that chattel he shall not recover:

148. "If he be neither an idiot, nor an infant under the full age of fifteen years, and if the chattel be adversely possessed in a place where he may see it, his property in it is extinct by law, and the adverse possessor shall keep it.

149. "A pledge, a boundary of land, the property of an infant, a deposit either open or in a chest sealed, female slaves, the wealth of a king, and of a learned Brahman, are not lost in consequence of adverse enjoyment.

158. "The man, who becomes surety for the appearance of a debtor in this world, and produces him not, shall pay the debt out of his own property;

159. "But money, due by a surety, or idly promised to musicians and actresses, or lost at play, or due for spirituous liquors, or what remains unpaid of a fine or toll, the son of the surety or debtor shall not in general be obliged to pay;

160. "Such is the rule in cases of a surety for appearance or good behavior; but, if a surety for payment should die, the judge may compel even his heirs to discharge the debt.

162. "If the surety had received money from the debtor, and had enough to pay the debt, the son of him, who so received it, shall discharge the debt out of his inherited property: this is a sacred ordinance.

163. "A contract made by a person intoxicated or insane, or grievously disordered, or wholly dependent, by an infant or a decrepit old man, or in the name of another by a person without authority, is utterly null.

164. "That plaint can have no effect, though it may be supported by evidence, which contains a cause of action inconsistent with positive law or with settled usage.

165. "When the judge discovers a fraudulent pledge or sale, a fraudulent gift and acceptance, or in whatever other case he detects fraud let him annul the whole transaction.

166. "If the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate.

167. "Should even a slave make a contract in the name of his absent master for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it.

168. "What is given by force to a man who cannot accept it legally, what is by force enjoyed, by force caused to be written, and all other things done by force or against free consent, Manu his pronounced void.

179. "A sensible man should make a deposit with some person of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family wealthy and venerable.

180. "Whatever thing, and in whatever manner, a person shall deposit

in the hands of another, the same thing, and in the same manner ought to be received back by the owner: as the delivery was, so must be the receipt.

181. "He, who restores not to the depositor, on his request, what has been deposited, may first be tried by the judge in the following manner, the depositor himself being absent.

182. "On failure of witnesses, let the judge actually deposit gold, or precious things, with the defendant, by the artful contrivance of spies, who have passed the age of childhood, and whose persons are engaging:

183. "Should the defendant restore that deposit in the manner and shape, in which it was bailed by the spies, there is nothing in his hands for which others can justly accuse him.

184. "But if he restore not the gold, or precious things, as he ought, to those emissaries, let him be apprehended and compelled to pay the value of both deposits: this is a settled rule.

189. "If a deposit be seized by thieves, or destroyed by vermin or washed away by water, or consumed by fire, the bailee shall not be obliged to make it good, unless he took of it for himself.

194. "Regularly a deposit should be produced, the same in kind and quantity as it was bailed, by the same and to the same person, by whom and from whom it was received, and before the same company, who were witnesses to the deposit: he who produces it in another manner, ought to be fined;

195. "But a thing, privately deposited, should be privately restored by and to the person, by and from whom it was received: as the bailment was, so should be the delivery, according to a rule in the Vêda.

201. "He, who had received a chattel, by purchase in open market, before a number of men, justly acquires the absolute property, by having paid the price for it, if he can produce the vendor;

202. "But, if the vendor be not producible, and the vendee prove the public sale, the latter must be dismissed by the king without punishment; and the former owner, who lost the chattel, may take it back by paying the vendee half its value."

Provision is made for the division of the fees of priests.

209. "At some holy rites, let the reader of the Yajurvêda take the car, and the Brahma, or superintending priest, the horse; or, on another occasion, let the reader of the Rîgvêda take the horse, and the chanter of the Sâmavêda receive the carriage, in which the purchased materials of the sacrifice had been brought.

210. "A hundred cows being distributable among sixteen priests, the four chief, or first set are entitled to near half, or forty-eight; the next four, to half of that number; the third set, to a third part of it; and the fourth set to a quarter:

215. "That hired servant or workman, who, not from any disorder but from indolence, fails to perform his work according to his agreement, shall be fined eight *racticàs*, and his wages or hire shall not be paid.

219. "The man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm:

220. "Or, according to circumstances, let the judge, having arrested the promise-breaker, condemn him to pay six *nishcas*, or four *suvernas*, or one *satamána* of silver, or all three if he deserve such a fine.

222. "A man, who has bought or sold anything in this world, that has a fixed price, and is not perishable, as land or metals, and wishes to rescind the contract, may give or take back such a thing within ten days;

223. "But, after ten days, he shall neither give nor take it back: the giver or the taker, except by consent, shall be fined by the king six hundred *panas*.

227. "The nuptial texts are a certain rule in regard to wedlock, and the bridal contract is known by the learned to be complete and irrevocable on the seventh step of the married pair, hand in hand, after those texts have been pronounced.

229. "I now will decide exactly, according to principles of law, the contests usually arising from the fault of such as own herds of cattle, and of such as are hired to keep them.

230. "By day the blame falls on the herdsman; by night on the owner, if the cattle be fed and kept in his own house; but, if the place of their food and custody be different, the keeper incurs the blame.

231. "That hired servant, whose wages are paid with milk, may, with the assent of the owner, milk the best cow out of ten: such are the wages of herdsmen, unless they be paid in a different mode.

232. "The herdsman himself shall make good the loss of a beast, which through his want of due care has strayed, has been destroyed by reptiles or killed by dogs, or has died by falling into a pit;

233. "But he shall not be compelled to make it good, when robbers have carried it away, if, after fresh proclamation and pursuit, he give notice to his master in a proper place and season."

Other rules relating to the loss of cattle and trespasses committed by them are given. In order to preserve established boundary lines the planting of trees or placing of stones and other durable monuments is enjoyed and rules for the settlement of disputes regarding boundaries are given.

267. "A soldier, defaming a priest, shall be fined a hundred *panas*; a merchant, thus offending, a hundred and fifty, or two hundred, but for such an offense, a mechanic or servile man shall be whipped.

268. "A priest shall be fined fifty, if he slander a soldier; twenty-five if a merchant; and twelve if he slander a man of the servile class.

269. "For abusing one of the same class, a twice-born man shall

be fined only twelve; but for ribaldry not to be uttered, even that and every fine shall be doubled.

270. "A once-born man, who insults the twice-born with gross invectives, ought to have his tongue slit; for he sprang from the lowest part of Brahma.

171. "If he mention their names and classes with contumely, as if he say "Oh Dévadatta, thou refuse of Brahmans," an iron style, ten fingers long, shall be thrust red hot into his mouth.

279. "With whatever member of a low-born man shall assault or hurt a superior, even that member of his must be slit, or cut more or less in proportion to the injury; this is an ordinance of Manu.

280. "He, who raises his hand or staff against another, shall have his hand cut; and he, who kicks another in wrath, shall have an incision made in his foot.

281. "A man of the lowest class, who shall insolently place himself on the same seat with one of the highest, shall either be banished with a mark on his hinder parts, or the king shall cause a gash to be made on his buttock:"

Special cases of assaults, negligent and accidental injuries are mentioned and punishments prescribed where injury results from the fault of any one.

299. "A wife, a son, a servant, a pupil, and a younger whole brother, may be corrected when they commit faults, with a rope or the small shoot of a cane;

300. "But on the back part only of their bodies, and not on a noble part by any means: he who strikes them otherwise than by this rule, incurs the guilt, or shall pay the fine, of a thief.

322. "For stealing more than fifty *palas*, it is enacted that a hand shall be amputated: for less, the king shall set a fine eleven times as much as the value.

323. "For stealing men of high birth, and women above all, and the most precious gems, as diamonds or rubies, the thief deserves capital punishment.

325. "For taking kine belonging to priests, and boring their nostrils, or for stealing their other cattle, the offender shall instantly lose half of one foot."

A considerable list of articles of property is given, for the stealing of which a fine of double the value of the property taken is imposed.

332. "If the taking be violent, and in the sight of the owner, it is robbery; if privately in his absence, it is only theft; and it is considered as theft, when a man having received anything, refuses to give it back.

333. "On him, who steals the before-mentioned things, when they are prepared for use, let the king set the lowest amercement of the three; and the same on him, who steals only fire from the temple.

334. "With whatever limb a thief commits the offense by any means in this world, as if he break a wall with his hand or his foot, even that limb shall the king amputate, for the prevention of a similar crime.

336. "Where another man of lower birth would be fined one *pana*, the king shall be fined a thousand, and he shall give the fine to the priests or cast it into the river: this is a sacred rule.

337. "But the fine of a *Súdra* for theft shall be eightfold; that of a *Vaisya*, sixteen fold; that of a *Cshatriya*, two and thirty fold.

338. "That of a *Brahman*, four and sixty fold; or a hundred fold complete or even twice four and sixty fold; each of them knowing the nature of his offense.

340. "A priest who willingly receives anything, either for sacrificing or instructing, from the hand of a man who had taken what the owner had not given, shall be punished even as the thief.

348. "The twice-born may take arms, when their duty is obstructed by force; and when, in some evil time, a disaster has befallen the twice-born classes;

349. "And in their own defense; and in a war for just cause; and in defense of a woman; or a priest; he who kills justly commits no crime.

350. "Let a man, without hesitation, slay another, if he cannot otherwise escape, who assails him with intent to murder, whether young or old, or his preceptor, or a *Brahman*, deeply versed in the scripture.

356. "He, who talks with the wife of another man at a place of pilgrimage, in a forest or a grove, or at the confluence of rivers, incurs the guilt of an adulterous inclination:

357. "To send her flowers or perfumes, to sport and jest with her, to touch her apparel or ornaments, to sit with her on the same couch, are held adulterous acts on his part;

358. "To touch a married woman on her breasts or any other place, which ought not to be touched, or being touched unbecomingly by her, to bear it complacently, are adulterous acts with mutual assent.

359. "A man of the servile class, who commits actual adultery with the wife of a priest, ought to suffer death; the wives, indeed, of all the four classes must ever be most especially guarded.

371. "Should a wife, proud of her family and the great qualities of her kinsmen, actually violate the duty, which she owes to her lord, let the king condemn her to be devoured by dogs in a place much frequented.

372. "And let him place an adulterer on an iron bed well heated, under which the executioners shall throw logs continually, till the sinful wretch be there burned to death.

374. "A mechanic or servile man, having an adulterous connexion with a woman of a twice-born class, whether guarded at home or unguarded shall thus be punished: if she was unguarded, he shall lose the part offending, and his whole substance; if guarded, and a priestess, every thing, even his life.

380. "Never shall the king slay a Brahman, though convicted of all possible crimes: let him banish the offender from his realm, but with all his property secure, and his body unhurt:

386. "That king, in whose realm lives no thief, no adulterer, no defamer, no man guilty of atrocious violence, and no committer of assaults, attains the mansion of Sacra.

389. "A mother, a father, a wife, and a son shall not be forsaken: he, who forsakes either of them, unless guilty of a deadly sin, shall pay six hundred *panas* as a fine to the king.

392. "The priest, who gives an entertainment to twenty men of the three first classes, without inviting his next neighbor, and his neighbor next but one, if both be worthy of an invitation, shall be fined one *másha* of silver.

394. "Neither a blind man nor an idiot, nor a cripple, nor a man full seventy years old, nor one who confers great benefit on priests of eminent learning, shall be compelled by any king to pay taxes.

395. "Let the king always do honour to a learned theologian, to a man either sick or grieved, to a little child, to an aged or indigent man, to a man of exalted birth, and to a man of distinguished virtue.

396. "Let a washerman wash the clothes of his employers by little and little, or piece by piece, and not hastily, on a smooth board of *Sálmāṣ*-wood: let him never mix the clothes of one person with the clothes of another, nor suffer any but the owner to wear them."

Tolls, markets and ferries are regulated.

414. "A *Súdra*, though emancipated by his master, is not released from a state of servitude; for of a state, which is natural to him, by whom can he be divested?

415. "There are servants of seven sorts; one made captive under a standard or in battle, one maintained in consideration of service, one born of a female slave in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment on his inability to pay a large fine.

416. "Three persons, a wife, a son, and a slave, are declared by law to have in general no wealth exclusively their own: the wealth, which they may earn, is regularly acquired for the man, to whom they belong."

This chapter covers a vast field but in a crude and disjointed manner. Its moral tone is not so high as that of the chapter dealing with the duties of the Brahmans. The king is not expected to exhibit the loftiest virtues but to deal with the vices and crimes of men by force and in ways calculated to restrain them. The spirit of caste and class privilege is constantly inculcated. The Brahmans are granted special favors and exempted from extreme punishment while the poor *Súdras* are loaded with the heaviest burdens without hope of present reward.

Chapter 9 is entitled, "On the Same; and on the Commercial and Servile Classes."

2. "Day and night must women be held by their protectors in a state of dependence; but in lawful and innocent recreations, though rather addicted to them, they may be left at their own disposal.

3. "Their fathers protect them in childhood; their husbands protect them in youth; their sons protect them in age: a woman is never fit for independence.

8. "The husband, after conception by his wife, becomes himself an embryo, and is born a second time here below; for which reason the wife is called *jáyá*, since by her (*jáyáte*) he is born again.

9. "Now the wife brings forth a son endued with similar qualities to those of the father; so that with the view to an excellent offspring, he must vigilantly guard his wife.

10. "No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

11. "Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and female duty, in the preparation of daily food, and the superintendence of household utensils,

12. "By confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

13. "Drinking spirituous liquor, associating with evil persons, absence from her husband, rambling abroad, unseasonable sleep, and dwelling in the house of another, are six faults which bring infamy on a married woman."

Then follow sections relating to the duties and conduct of women and inculcating chastity and fidelity.

45. "Then only is a man perfect, when he consists of three persons united, his wife, himself, and his son; and thus have learned Brahmans announced this maxim: 'The husband is even one person with his wife,' for all domestic and religious, not for all civil, purposes.

59. "On failure of issue by the husband, if he be of the servile class, the desired offspring may be procreated, either by his brother or some other *sapinda*, on the wife, who has been duly authorized.

60. "Sprinkled with clarified butter, silent, in the night, let the kinsman thus appointed beget one son, but a second by no means, on the widow or childless wife:

77. "For a whole year let a husband bear with his wife, who treats him with aversion; but after a year, let him deprive her of her separate property, and cease to cohabit with her.

78. "She, who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture:

79. "But she, who is averse from a mad husband, or a deadly sinner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes, must neither be deserted nor stripped of her property.

80. "A wife who drinks any spirituous liquors, who acts immorally, who shows hatred to her lord, who is incurably diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.

81. "A barren wife may be superseded by another in the eighth year: she, whose children are all dead, in the tenth; she, who brings forth only daughters, in the eleventh; she, who speaks unkindly, without delay;

82. "But she, who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent.

85. "When twice-born men take wives, both of their own class and others, the precedence, honour and habitation of those wives, must be settled according to the order of their classes:

86. "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion;

88. "To an excellent and handsome youth of the same class, let every man give his daughter in marriage, according to law; even though she have not attained her age of eight years:

89. "But it is better that the damsel, though marriageable, should stay at home till her death, than that he should ever give her in marriage to a bridegroom void of excellent qualities.

90. "Three years let a damsel wait, though she be marriageable; but, after that term, let her choose for herself a bridegroom of equal rank.

91. "If, not being given in marriage, she choose her bridegroom, neither she, nor the youth chosen, commits any offense;

92. "But a damsel, thus electing her husband, shall not carry with her the ornaments, which she received from her father, nor those given by her mother or brethren; if she carry them away, she commits theft.

93. "He, who takes to wife a damsel of full age, shall not give a nuptial present to her father; since the father lost the dominion over her, by detaining her at a time, when she might have been a parent.

94. "A man, aged thirty years, may marry a girl of twelve, if he find one dear to his heart; or a man of twenty-four years, a damsel of eight: but, if he finish his studentship earlier, and the duties of his next order would otherwise be impeded, let him marry immediately.

101. "Let mutual fidelity continue to death:" this in few words, may be considered as the supreme law between husband and wife.

104. "After the death of the father and the mother, the brothers being assembled, may divide among themselves the paternal and maternal estate; but they have no power over it, while their parents live, unless the father choose to distribute it.

105. "The eldest brother may take entire possession of the patrimony; and the others may live under him, as they lived under their father, unless they choose to be separated.

108. "Let the father alone support his sons; and the first-born, his younger brothers; and let them behave to the eldest, according to law, as children should behave to their father.

111. "Either let them thus live together, or, if they desire separately to perform religious rites, let them live apart; since religious duties are multiplied in separate houses, their separation is, therefore, legal and even laudable.

112. "The portion deducted for the eldest is a twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that, or a fortieth; for the youngest a quarter of it, or an eightieth.

113. "The eldest and youngest respectively take their just mentioned portions; and, if there be more than one between them, each of the intermediate sons has the mean portion of the fortieth.

117. "Let the eldest have a double share, and the next born, a share and a half, if they clearly surpass the rest in virtue and learning; the younger sons must have each a share; if all be equal in good qualities, they must all take share and share alike.

118. "To the unmarried daughters by the same mother, let their brothers give portions out of their own allotments respectively, according to the classes of their several mothers: let each give a fourth part of his own distinct share; and they, who refuse to give it, shall be degraded.

119. "Let them never divide the value of a single goat or sheep, or a single beast with uncloven hoofs; a single goat or sheep remaining after an equal distribution, belongs to the first born.

120. "Should a younger brother, in the manner before mentioned, have begotten a son on the wife of his deceased elder brother, the division must then be made equally between that son, who represents the deceased, and his natural father: thus is the law settled.

127. "He, who has no son, may appoint his daughter in this manner to raise up a son for him, saying: "the male child, who shall be born from her in wedlock, shall be mine for the purpose of performing my obsequies."

131. "Property given to the mother on her marriage, is inherited by her unmarried daughter; and the son of a daughter, appointed in the manner just mentioned, shall inherit the whole estate of her father, who leaves no son by himself begotten:

134. "But, a daughter having been appointed to produce a son for her father, and a son begotten by himself, being afterwards born, the division of the heritage must in that case be equal; since there is no right of primogeniture for a woman.

137. "By a son, a man obtains victory over all people; by a son's

son, he enjoys immortality; and afterwards, by the son of that grandson, he reaches the solar abode.

149. "If there be four wives of a Brahman in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:

150. "The chief servant in husbandry, the bull kept for impregnating cows, the riding-horse or carriage, the ring and other ornaments, and the principal messuage, shall be deducted from the inheritance and given to the Brahman-son, together with a larger share by way of pre-eminence.

151. "Let the Brahman take three shares of the residue; the son of the Cshatriyā-wife, two shares; the son of the Vaisyā-wife, a share and a half; and the son of the Súdṛā-wife, may take one share.

152. "Or, if no deduction be made, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this following rule.

153. "Let the son of the Bráhmaṇi take four parts; the son of the Cshatriyā three; let the son of the Vaisyā have two parts; let the son of the Súdṛā take a single part, if he be virtuous.

154. "But whether the Brahman have sons, or have no sons, by wives of the three first classes, no more than a tenth part must be given to the son of a Súdṛā.

155. "The son of a Brahman, a Cshatriya, or a Vaisyā or a woman of the servile class, shall inherit no part of the estate, unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married: whatever his father may give him, let that be his own.

156. "All the sons of twice-born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first-born his deducted allotment.

157. "For a Súdṛa is ordained a wife of his own class, and no other: all, produced by her, shall have equal shares, though she have a hundred sons.

158. Of the twelve sons of men, whom Manu, sprung from the Self-existent, has named, six are kinsmen and heirs; six, not heirs, except to their own fathers, but kinsmen.

159. "The son begotten by a man himself in lawful wedlock, the son of his wife begotten in the manner before described, a son given to him, a son made or adopted, a son of concealed birth, or whose real father cannot be known, and a son rejected by his natural parents, are the six kinsmen and heirs:

160. "The son of a young woman unmarried, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a Súdṛā, are the six kinsmen, but not heirs to collaterals.

161. "Such advantage, as a man would gain, who should attempt to pass deep water in a boat made of woven reeds, that father obtains,

who passes the gloom of death, leaving only contemptible sons, who are the eleven, or at least the six last mentioned.

182. "If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of a male child by means of that son; so that, if such nephew would be the heir, the uncles have no power to adopt sons:

- 183. "Thus if, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son to be mothers of male issue.

184. "On failure of the best, and of the next best, among those twelve sons, let the inferior in order take the heritage; but, if there be many of equal rank let all be sharers of the estate.

185. "Not brothers, nor parents, but sons, if living, or their male issue are heirs to the deceased, but of him, who leaves no son, nor a wife, nor a daughter, the father shall take the inheritance; and, if he leave neither father, nor mother, the brothers.

187. "To the nearest *sapinda*, male or female, after him in the third degree, the inheritance next belongs; then, on failure of *sapindas* and of their issue, the *samánódaca*, or distant kinsman, shall be the heir; or the spiritual preceptor, or the pupil, or the fellow-student, of the deceased:

188. "On failure of all those, the lawful heirs are such Brahmans as have read the three Védas, as are pure in body and mind, as have studied their passions; and they must consequently offer the cake: thus the rites of obsequies cannot fail.

189. "The property of a Brahman shall never be taken as an escheat by the king; this is fixed law; but the wealth of the other classes on failure of all heirs, the king may take.

192. "On the death of the mother, let all the uterine brothers and the uterine sisters, if unmarried, equally divide the maternal estate: each married sister shall have a fourth part of a brother's allotment.

193. "Even to the daughters of those daughters, it is fit, that something should be given from the assets of the maternal grandmother, on the score of natural affection.

194. "What was given before the nuptial fire, what was given on the bridal procession, what was given in token of love, and what was received from a brother, a mother, or a father, are considered as the sixfold separate property of a married woman.

195. "What she received after marriage from the family of her husband, and what her affectionate lord may have given her, shall be inherited, even if she die in his lifetime, by her children.

196. "It is ordained, that the property of a woman, married by the ceremonies called *Bráhma*, *Daiva*, *Arsha*, *Gándharva*, or *Prajápátya*, shall go to her husband, if she die without issue.

197. "But her wealth given on the marriage called *Āsura*, or on either of the two others, is ordained, on her death without issue, to become the property of her father and mother.

201. "Eunuchs and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage;

202. "But it is just, that the heir, who knows his duty, should give all of them food and raiment for life without stint, according to the best of his power: he, who gives them nothing, sinks assuredly to a region of punishment."

Many other rules of inheritance in special cases are given.

224. "Let the king punish corporally at discretion, both the gamester and the keeper of a gaming-house, whether they play with inanimate or animate things; and men of the servile class, who wear the string and other marks of the twice-born.

225. "Gamesters, public dancers and singers, revilers of scripture, open heretics, men who perform not the duties of their several classes; and sellers of spirituous liquor, let him instantly banish from the town:

230. "For women, children, persons of crazy intellect, the old, the poor, and the infirm, the king shall order punishment with a small whip, a twig, or a rope.

232. "Such as forge royal edicts, cause dissensions among the great ministers, or kill women, priests, or children, let the king put to death; and such, as adhere to his enemies."

Following these sections comes a miscellaneous list of offenses for which fines and punishments are prescribed. The duty of the king to cause the detection of crimes and the punishment of criminals is declared and the use of spies is recommended.

276. "Of robbers, who break a wall or partition, and commit theft in the night, let the prince order the hands to be lopped off, and themselves to be fixed on a sharp stake.

277. "Two fingers of a cutpurse, the thumb and the index, let him cause to be amputated on his first conviction; on the second, one hand and one foot; on the third, he shall suffer death.

278. "Such, as give thieves fire, such as give them food, such as give them arms and apartments, and such as knowingly receive a thing stolen, let the king punish as he would punish a thief.

280. "Those, who break open the treasury, or the arsenal, or the temple of a deity, and those, who carry off royal elephants, horses, or cars, let him without hesitation destroy.

287. "The man, who shall deal unjustly with purchasers at a fair price by delivering goods of less value, or sell at a high price goods of ordinary value, shall pay, according to circumstances, the lowest or the middle amercement.

290. "For all sacrifices to destroy innocent men, the punishment is a fine of two hundred *panas*; and for machinations with poisonous roots, and for various charms and witcheries intended to kill, by persons not effecting their purpose.

292. "But the most pernicious of all deceivers is a goldsmith, who commits frauds: the king shall order him to be cut piecemeal with razors."

After these rules for the punishment of crime there is an abrupt change of subject to a consideration of the powers and duties of a king.

301. "All the ages, called *Satya*, *Tréta*, *Dwápara*, and *Cali*, depend on the conduct of the king; who is declared in turn to represent each of those ages.

302. "Sleeping, he is the *Cali* age; waking, the *Dwápara*; exerting himself in action, the *Tréta*; living virtuously, the *Satya*.

313. "Let him not, although in the greatest distress for money, provoke Brahmans to anger by taking their property; for they, once enraged, could immediately by sacrifices and imprecations destroy him with his troops, elephants, horses and cars.

314. "Who, without perishing, could provoke those holy men, by whom, that is, by whose ancestors, under Brahma, the all-devouring fire was created, the sea with waters not drinkable, and the moon with its wane and increase?

320. "Of a military man, who raises his arm violently on all occasions against the priestly class, the priest himself shall be the chastiser; since the soldier originally proceeded from the Brahman.

326. Let the *Vaisya*, having been girt with his proper sacrificial thread, and having married an equal wife, be always attentive to his business of agriculture and trade, and to that of keeping cattle;

327. "Since the lord of created beings, having formed herds, and flocks, intrusted them to the care of the *Vaisya*, while he intrusted the whole human species, to the Brahman and the *Cshatriya*:

329. "Of gems, pearls, and coral, of iron, of woven cloth, of perfumes and of liquids, let him well know the prices both high and low.

330. "Let him be skilled likewise in the time and manner of sowing seeds, and in the bad or good qualities of land; let him also perfectly know the correct modes of measuring and weighing.

331. "The excellence or defects of commodities, the advantages and disadvantages of different regions, the probable gain or loss on vendible goods, and the means of breeding cattle with large augmentation.

332. "Let him know the just wages of servants, the various dialects of men, the best way of keeping goods, and whatever else belongs to purchase and sale.

333. "Let him apply the most vigilant care to augment his wealth by performing his duty; and, with great solicitude, let him give nourishment to all sentient creatures.

334. "Servile attendance on Brahmans learned in the Véda, chiefly on such as keep house and are famed for virtue, is of itself the highest duty of a Súdra, and leads him to future beatitude.

335. "Pure in body and mind, humbly serving the three higher classes, mild in speech, never arrogant, ever seeking refuge in Brahmans principally, he may attain the most eminent class in another transmigration.

Chapter 10 is "On the Mixed Classes; and on Times of Distress."

4. "The three twice-born classes are the sacerdotal, the military, and the commercial; but the fourth, or servile, is once-born, that is, has no second birth from the gáyatrí, and wears no thread: nor is there a fifth pure class.

5. "In all classes they, and they only, who are born in a direct order, of wives equal in class and virgins at the time of marriage, are to be considered as the same in class with their fathers":

Here follows an account of the origin of the various sub or impure castes by intermarriages of members of the different castes and sub-castes and a designation of their several occupations.

12. "From a Súdra, on women of the commercial, military, and priestly class, are born sons of a mixed breed, called Áyogava, Cshattrí and Chandála, the lowest of mortals.

38. "From a Chandála by a Pucassi woman, is born a Sópáca who lives by punishing criminals, condemned by the king, a sinful wretch ever despised by the virtuous.

42. "By the force of extreme devotion and of exalted fathers, all of them may rise in time to high birth, as by the reverse they may sink to a lower state, in every age among mortals in this inferior world.

45. "All those tribes of men, who sprang from the mouth, the arm, the thigh, and the foot of Brahma, but who became outcasts by having neglected their duties, and called Dasyus, or plunderers, whether they speak the language of Mléch'chhas, or that of Aryas.

46. "Those sons of the twice-born who are said to be degraded, and who are considered as low-born, shall subsist only by such employments, as the twice-born despise.

64. "Should the tribe, sprung from a Brahman, by a Súdra-woman, produce a succession of children by the marriages of its women with other Brahmans, the low tribe shall be raised to the highest in the seventh generation.

65. "As the son of a Súdra may thus attain the rank of Brahman, and as the son of a Brahman may sink to a level with Súdras, even so must it be with him, who springs from Cshatriya; even so with him who was born of a Vaisya.

74. "Let such Brahmans as are intent on the means of attaining the supreme god-head, and firm in their own duties, completely perform, in order, the six following acts:

75. "Reading the Védas, and teaching others to read them, sacrificing, and assisting others to sacrifice, giving to the poor, if themselves have enough, and accepting gifts from the virtuous if themselves are poor, are the six prescribed acts of the first-born class.

76. "But, among those six acts of a Brahman, three are his means of subsistence; assisting to sacrifice, teaching the Védas, and receiving gifts from a pure handed giver,

77. "Three acts of duty cease with the Brahman, and belong not to the Cshatriya; teaching the Védas, officiating at a sacrifice, and, thirdly, receiving presents:

78. "Those three are also (by the fixed rule of law) forbidden to the Vaisya; since Manu, the lord of all men, prescribed not those acts to the two classes, military and commercial.

79. "The means of subsistence peculiar to the Cshatriya, are bearing arms, either held for striking or missile, to the Vaisya, merchandise, attending on cattle, and agriculture: but with a view to the next life, the duties of both are almsgiving, reading, sacrificing."

A statement is then given in detail of the occupations that may be followed by the twice-born in cases of necessity, where they are unable to live in the manner appropriate to their respective castes.

115. "There are seven virtuous means of acquiring property, succession, occupancy or donation, and purchase or exchange, which are allowed to all classes; conquest, which is peculiar to the military class; lending at interest, husbandry or commerce, which belong to the mercantile class; and acceptance of presents, by the sacerdotal class, from respectable men.

116. "Learning, except that contained in the scriptures, arts, as mixing perfumes and the like, work for wages, menial service, attendance on cattle, traffick, agriculture, content with little, alms, and receiving high interest on money, are ten modes of subsistence in times of distress.

117. "Neither a priest nor a military man, though distressed, must receive interest on loans, but each of them, if he please, may pay the small interest permitted by law, on borrowing for some pious use, to the sinful man, who demands it.

120. "The tax on the mercantile class, which in times of prosperity must be only a twelfth part of their crops, and a fifteenth of their personal profits, may be an eighth of their crops in a time of distress, or a sixth, which is the medium, or even a fourth in great publick adversity; but a twentieth of their gains on money, and other movables, is the highest tax; serving men artisans, and mechanics must assist by their labour, but at no time pay taxes.

129. "No superfluous collection of wealth must be made by a Súdará, even though he has power to make it, since a servile man, who has amassed riches, becomes proud, and, by his insolence or neglect, gives pain even to Brahmans.

Chapter 11 is "On Penance and Expiation." Penances are prescribed as religious observances for the good of the individual and to relieve him from the degradation resulting from his transgression. Some other matters are treated of in the chapter.

1. "Him, who intends to marry for the sake of having issue; him, who wishes to make a sacrifice; him, who travels; him, who has given all his wealth at a sacred rite; him, who desires to maintain his preceptor; his father, or his mother; him, who needs a maintenance for himself, when he first reads the Védas; and him, who is afflicted with illness;

2. These nine Brahmans let mankind consider as virtuous mendicants, called *snátacas*; and, to relieve their wants, let gifts of cattle or gold be presented to them in proportion to their learning.

3. "To these most excellent Brahmans must rice also be given, with holy presents at oblations to fire and within the consecrated circle; but the dressed rice, which others are to receive, must be delivered on the outside of the sacred hearth; gold and the like may be given anywhere.

4. "On such Brahman as well known the Vēda, let the king bestow, as it becomes him, jewels of all sorts, and the solemn reward for officiating at the sacrifice.

9. "He, who bestows gifts on strangers, with a view to wordly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit:

10. "Even what he does for the sake of his future spiritual body to the injury of those, whom he is bound to maintain, shall bring him ultimate misery both in this life and in the next."

Where a sacrifice is to be performed and some necessary article is lacking the Brahman performing the sacrifice is authorized to take it from one having sufficient possessions.

34. "A soldier may avert danger from himself by the strength of his arm; a merchant and a mechanic, by their property; but the chief of the twice-born, by holy texts and oblations to fire.

36. "Let not a girl nor a young woman married or unmarried, nor a man with little learning, nor a dunce, perform an oblation to fire; nor a man diseased, nor one uninvested with the sacrificial string;

40. "The organs of sense and action, reputation in this life, a heavenly mansion in the next, life itself, a great name after death, children and cattle, are all destroyed by a sacrifice offered with trifling presents: let no man, therefore, sacrifice without liberal gifts.

69. "To kill an ass, a horse, a camel, a deer, an elephant, a goat, a sheep, a fish, a snake, or a buffalo, is declared an offense, which degrades the killer to a mixed tribe.

70. "Accepting presents from despicable men. illegal traffic, attendance

on a Súdra master, and speaking falsehood, must be considered as causes of exclusion from social repasts.

71. "Killing an insect, small or large, a worm, or a bird, eating what has been brought in the same basket with spirituous liquor, stealing fruit, or flowers, and great perturbation of mind on trifling occasions, are offenses which cause defilement.

94. "Since the spirit of rice is distilled from the *Mala*, or filthy refuse of the grain, and since *Mala* is also a name for sin, let no Brahman, Cshatriya or Vaisya drink that spirit.

95. "Inebriating liquor may be considered as of three principal sorts: that extracted from dregs of sugar, that extracted from bruised rice, and that extracted from the flowers of the *Madhúca* as one, so are all; they shall not be tasted by the chief of the twice-born.

98. "When the divine spirit, or the light of the holy knowledge, which has been infused into his body, has once been sprinkled with any intoxicating liquor, even his priestly character leaves him, and he sinks to the low degree of a Súdra.

127. "For killing intentionally a virtuous man of the military class, the penance must be a fourth part of that ordained for killing a priest; for killing a Vaisya, only an eighth; for killing a Súdra, who had been constant in discharging his duties, a sixteenth part.

132. "If he kill by design a cat, or an ichneumon, the bird *Chása*, or a frog, a dog, a lizard, an owl, or a crow, he must perform the ordinary penance required for the death of a Súdra, that is the *chándráyana*."

Penances and purifications are required for eating prohibited foods of which there is a long list.

166. "For taking what may be eaten, or what may be sipped, a carriage, a bed, or a seat, roots, flowers, or fruit, an atonement may be made by swallowing the five pure things produced by a cow, or milk, curds, butter, urine, dung:

211. "Those penances, by which a man may atone for his crimes, I now will describe to you; penances, which have been performed by deities, by holy sages, and by forefathers of the human race.

212. "When a twice-born man performs the common penance, or that of *Prajápati*, he must for three days eat only in the morning; for three days, only in the evening; for three days, food unasked but presented to him; and for three more days nothing.

213. "Eating for a whole day the dung and urine of cows mixed with curds, milk, clarified butter, and water boiled with cusa-grass, and then fasting entirely for a day and a night, is the penance called *Sántapana* (either from the devout man *Sántapana*, or from tormenting).

214. "A twice-born man performing the penance, called very severe, in respect of the common, must eat, as before, a single mouthful, or a ball of rice as large as a hen's egg, for three times three days; and for the last three days, must wholly abstain from food.

215. "A Brahman, performing the ardent penance, must swallow nothing but hot water, hot milk, hot clarified butter, and hot steam, each of them for three days successively, performing an ablution and mortifying all his members.

216. "A total fast for twelve days and nights, by a penitent with his organs controlled and his mind attentive, is the penance named *parāca*, which expiates all degrees of guilt.

217. "If he diminish his food by one mouthful each day, during the dark fortnight, eating fifteen mouthfuls on the day of the opposition, and increase it, in the same proportion, during the bright fortnight, fasting entirely on the day of the conjunction, and perform an ablution regularly at sunrise, noon, and sunset, this is the *chāndráyana*, or the lunar penance:

218. "Such is the penance called ant-shaped or narrow in the middle; but, if he perform the barley shaped, or broad in the middle, he must observe the same rule, beginning with the bright half-month, and keeping under command his organs of action and sense.

223. "The oblation of clarified butter to fire must every day be made by the penitent himself, accompanied with the mighty words, earth, sky, heaven; he must perfectly abstain from injury to sentient creatures, from falsehood, from wrath, and from all crooked ways.

224. "Or, thrice each day, and thrice each night for a month, the penitent may plunge into water clothed in his mantle, and at no time conversing with a woman, a *Súdra*, or an outcast.

225. "Let him be always in motion, sitting and rising alternately, or, if unable to be thus restless, let him sleep low on the bare ground; chaste as a student of the *Véda*, bearing the sacred Zone and staff, showing reverence to his preceptor, to the gods, and to priests.

226. "Perpetually must he repeat the *Gáyatri*, and other pure texts to the best of his knowledge: thus in all penances for absolution from sin, must he vigilantly employ himself.

229. "In proportion as a man, who has committed a sin, shall truly and voluntarily confess it, so far he is disengaged from that offense, like a snake from his slough;

230. "And, in proportion as his heart sincerely loathes his evil deed, so far shall his vital spirit be freed from the taint of it.

235. All the bliss of deities and of men is declared by sages, who discern the sense of the *Véda*, to have in devotion its cause, in devotion its continuance, in devotion its fulness.

236. "Devotion is equal to the performance of all duties; it is divine knowledge in a Brahman; it is defense of the people in a *Cshatriya*; devotion is the business of trade and agriculture in a *Vaisya*; devotion is dutiful service in a *Súdra*.

244. "Even *Brahma*, lord of creatures, by devotion enacted this code of

laws; and the sages by devotion acquired a knowledge of the Védas.

245. "Thus the gods themselves, observing in this universe the incomparable power of devotion, have proclaimed aloud the transcendent excellence of pious austerity.

249. "Sixteen suppressions of the breath, while the holiest of texts is repeated with the three mighty words, and the triliteral syllable, continued each day for a month, absolve even the slayer of a Brahman from his hidden faults.

250. "Even a drinker of spirituous liquors is absolved by repeating each day the text *apa* used by the sage Cautsa, or that beginning with *preti* used by Vasishtha, or that called *máhitra*, or that, of which the first word is *suddhavatyah*.

251. "By repeating each day for a month the text *ásvavámiya*, or the hymn *Sivasancalpa*, the stealer of gold from a priest becomes instantly pure.

262. "A priest who should retain in his memory the whole Rigvéda, would be absolved from guilt, even if he had slain the inhabitants of the three worlds, and had eaten food from the foulest hands.

263. "By thrice repeating the *mantras* and *brahmanas* of the *Rich*, or those of the *Yajush*, or those of the *Saman*, with the *Upanishads*, he shall perfectly be cleansed from every possible taint.

264. "As a clod of earth, cast into a great lake, sinks in it, thus is every sinful act submerged in the triple Véda.

265. "The divisions of the *Rich*, the several branches of the *Yajush*, and the manifold strains of the *Sáman* must be considered as forming the triple Véda: he knows the Véda, who knows them collectively.

266. "The primary triliteral syllable, in which the three Védas themselves are comprised, must be kept secret, as another triple Véda, he who knows the Véda, who distinctly knows the mystic sense of that word."

The 12th and last chapter is "On Transmigration and Final Beatitude."

3. "Action, either mental, verbal, or corporal, bears good or evil fruit, as itself is good or evil; and from the actions of men proceed their various transmigrations in the highest, the mean, and the lowest degree:

4. "Of that three-fold action, connected with bodily functions, disposed in three classes, and consisting of ten orders, be it known in this world, that the heart is the instigator.

5. "Devising means to appropriate the wealth of other men, resolving on any forbidden deed, and conceiving notions of atheism or materialism, are the three bad acts of mind:

6. "Scurrilous language, falsehood, indiscriminate backbiting, and useless tattle, are the four bad acts of the tongue:

7. Taking effects not given, hurting sentient creatures without the

sanction of law, and criminal intercourse with the wife of another, are the three bad acts of the body; and all the ten have their opposites which are good in an equal degree.

8. "A rational creature has a reward or a punishment for mental acts, in his mind; for verbal acts, in his organs of speech; for corporal acts, in his bodily frame.

9. "For sinful acts mostly corporal, a man shall assume after death a vegetable or mineral form; for such acts mostly verbal, the form of a bird or a beast; for acts mostly mental, the lowest of human conditions:

12. "That substance which gives a power of motion, to the body, the wise call *cshétrañya*, or *jívátman*, the vital spirit; and that body, which thence derives active functions, they name *bhútátman*, or composed of elements:

13. "Another internal spirit, called *mahat*, or the great soul, attends the birth of all creatures imbodyed, and thence in all mortal forms is conveyed a peception either pleasing or painful.

14. "Those two, the vital spirit and reasonable soul, are closely united with five elements, but connected with the supreme spirit, or divine essence, which pervades all beings high and low:

15. "From the substance of that supreme spirit are diffused, like sparks from fire, innumerable vital spirits, which perpetually give motion to creatures exalted and base.

16. "By the vital souls of those men, who have committed sins in the body reduced to ashes, another body, composed of nerves with five sensations, in order to be susceptible of torment, shall certainly be assumed after death;

17. "And, being intimately united with those minute nervous particles, according to their distribution, they shall feel, in that new body, the pangs inflicted in each case by the sentence of Yama.

18. "When the vital soul has gathered the fruit of sins, which arise from a love of sensual pleasure, but must produce misery, and, when its taint has thus been removed, it approaches again those two most effulgent essences, the intellectual soul and the divine spirit:

19. "They two, closely conjoined, examine without remission the virtues and vices of that sensitive soul, according to its union with which it acquires pleasure or pain in the present and future worlds.

20. "If the vital spirit had practised virtue for the most part, and vice in a small degree, it enjoys delight in celestial abodes, clothed with a body formed of pure elementary particles;

21. "But, if it had generally been addicted to vice, and seldom attended to virtue, then shall it be deserted by those pure elements, and, having a coarser body of sensible nerves, it feels the pain to which Yama shall doom it:

22. "Having endured those torments according to the sentence of

Yama, and its taint being almost removed, it again reaches those five pure elements in the order of their natural distribution.

24. "Be it known, that the three qualities of the rational soul are a tendency of goodness, to passion, and to darkness; and, endued with one or more of them, it remains incessantly attached to all those created substances:

25 "When any one of the three qualities predominates in a mortal frame, it renders the embodied spirit eminently distinguishable for that quality.

26. "Goodness is declared to be true knowledge; darkness, gross ignorance; passion, an emotion of desire or aversion; such is the compendious description of those qualities, which attend all souls.

31. "Study of scripture, austere devotion, sacred knowledge, corporeal purity, command over the organs, performances of duties, and meditation on the divine spirit, accompany the good quality of the soul:

32. "Interested motives for acts of religion or morality, perturbation of mind on slight occasions, commission of acts forbidden by law, and habitual indulgence in selfish gratifications, are attendant on the quality of passion:

33. "Covetousness, indolence, avarice, detraction, atheism, omission of prescribed acts, a habit of soliciting favors, and inattention to necessary business, belong to the dark quality.

38. "Of the dark quality, as described, the principal object is pleasure; of the passionate, wordly prosperity; but of the good quality the chief object is virtue: the last mentioned objects are superior in dignity.

40. "Souls, endued with goodness, attain always the state of deities; those filled with ambitious passions, the condition of men; and those immersed in darkness, the nature of beasts; this is the triple order of transmigration.

42. "Vegetable and mineral substances, worms, insects, and reptiles, some very minute, some rather larger, fish, snakes, tortoises, cattle *shakals*, are the lowest forms, to which the dark quality leads.

43. "Elephants, horses, men of the servile class, and contemptible *Mléchhas*, or barbarians, lions, tigers, and boars are the mean states procured by the quality of darkness:

44. "Dancers and singers, birds, and deceitful men, giants, and blood-thirsty savages, are the highest conditions, to which the dark quality can ascend.

45. "*J'hallas*, or cudgel-players, *Mallas*, or boxers and wrestlers, *Natas*, or actors, those who teach the use of weapons, and those who are addicted to gaming or drinking, are the lowest forms occasioned by the passionate quality:

46. "Kings, men of the fighting class, domestic priests of kings, and men skilled in the war of controversy, are the middle states caused by the quality of passion:

47. "*Gandharvas*, or aerial musicians, *Guhyacas*, and *Yacshas*, or servants and companions of *Cuvéra*, genii attending superior gods, as the *Vidyadharas* and others, together with various companies of *Apsarases* or nymphs, are the highest of those forms, which the quality of passion attains.

48. Hermits, religious mendicants, other Brahmans, such orders of demigods as are wafted in airy cars, genii of the signs and lunar mansions, and Daityas, or the offspring of Diti, are the lowest of states procured by the quality of goodness:

49. "Sacrificers, holy sages, deities of the lower heaven, genii of the Védas, regents of stars not in the paths of the sun and moon, divinities of years, Pitris or progenitors of mankind, and the demigods named Sádhyas, are the middle forms, to which the good quality conveys all spirits moderately endued with it:

50. "Brahmá with four faces, creators of worlds under him, as Marichi and others, the genius of virtue, the divinities presiding over (two principles of nature in the philosophy of Capila) *mahat*, or the mighty, and *avyacta*, or unperceived, are the highest conditions, to which, by the good quality, souls are exalted.

Then follows an account of the particular incarnations which the soul must endure for the various offenses.

83. "Studying and comprehending the Véda, practising pious austerities, acquiring divine knowledge of law and philosophy, command over the organs of sense and action, avoiding all injury to sentient creatures, and showing reverence to a natural and spiritual father, are the chief branches of duty which ensure final happiness.

84. "Among all those good acts performed in this world, said the sages, is no single act held more powerful than the rest in leading men to beatitude?

85. "Of all those duties, answered Bhṛigu, the principal is to acquire from the Upanishads a true knowledge of one supreme God; that is the most exalted of all sciences, because it ensures immortality:

90. "He, who frequently performs interested rites, attains an equal station with the regents of the lower heaven; but he, who frequently performs disinterested acts of religion, becomes forever exempt from a body composed of the five elements:

91. "Equally perceiving the supreme soul in all beings and all beings in the supreme soul, he sacrifices his own spirit by fixing it on the spirit of God, and approaches the nature of that sole divinity, who shines by his own effulgence.

94. "To patriarchs, to deities, and to mankind, the scripture is an eye giving constant light; nor could the Véda-Sástra have been made by human faculties; nor can it be measured by human reason unassisted by revealed glosses and comments: this is a sure proposition.

95. "Such codes of law as are not grounded on the Vēda, and the various heterodox theories of men, produce no good fruit after death, for they are all declared to have their basis on darkness.

101. "As fire with augmented force burns up even humid trees, thus he, who well knows the Vēda, burns out the taint of sin, which has infected his soul.

108. "If it be asked, how the law shall be ascertained, when particular cases are not comprised under any of the general rules, the answer is this: "That, which well-instructed Brahmans propound, shall be held incontestable law.

109. "Well instructed Brahmans are they, who can adduce ocular proof from the scripture itself, having studied, as the law ordains, the Vēdas and their extended branches, or Védāngas, Mīnānsā, Nyāya, Dharma-Sāstra, Purānas.

110. "A point of law, before not expressly revealed, which shall be decided by an assembly of ten such virtuous Brahmans under one chief, or, if ten be not procurable, of three such under one president, let no man controvert.

111. "The assembly of ten under a chief, either the king himself or a judge appointed by him, must consist of three, each of them peculiarly conversant with one of the three Vēdas, of a fourth skilled in the Nyāya, and a fifth in the Mīnānsā philosophy; of a sixth, who has particularly studied the Niracta; a seventh, who has applied himself most assiduously to the Dharma-Sāstra; and of three universal scholars, who are in the three first orders.

112. One, who has chiefly studied the Rīgvēda, a second, who principally knows the Yajush, and a third best acquainted with the Sāman, are the assembly of three under a head, who may remove all doubts both in law and casuistry.

113. Even the decision of one priest, if more cannot be assembled, who perfectly knows the principles of the Vēdas, must be considered a law of the highest authority; not the opinions of myriads, who have no sacred knowledge.

118. "Let every Brahman with fixed attention consider all nature, both visible and invisible, as existing in the divine spirit, for when he contemplates the boundless universe existing in the divine spirit, he cannot give his heart to iniquity:

119. "The divine spirit alone is the whole assemblage of gods; all worlds are seated in the divine spirit; and the divine spirit no doubt produces, by a chain of causes and effects consistent with free-will, the connected series of acts performed by embodied souls.

122. "But he must consider the supreme omnipresent intelligence as the sovereign lord of them all, by whose energy alone they exist; a spirit, by no means the object of any sense, which can only be conceived

by a mind wholly abstracted from matter, and as it were slumbering; but which, for the purpose of assisting his meditation, he may imagine more subtle than the finest conceivable essence, and more bright than the purest gold.

123. Him some adore as transcendently present in elementary fire; others, in Manu, lord of creatures, or an immediate agent in the creation; some, as more distinctly present in Indra, regent of the clouds and atmosphere; others in pure air; others, as the most High Eternal Spirit.

124. "It is he, who, pervading all beings in five elemental forms, causes them by the gradations of birth, growth, and dissolution, to revolve in this world, until they deserve beatitude, like the wheels of a car.

125. "Thus the man, who perceives in his own soul the supreme soul present in all creatures, acquires equanimity toward them all, and shall be absorbed at last in the highest essence, even that of the Almighty himself."

The fundamental principles of this code are more ancient than the code itself. Castes had existed from a considerably earlier time, and the religious ideas are based on and taken from the Védas. When it is considered that the system of laws embodied in this code was in force in its essential features more than three thousand years ago, and that the vast population of India is still so strongly attached to it, that the British government finds it expedient to adjust the rights of litigants in accordance with its rules, it must be accorded preeminence for stability and immutability over all other codes ever promulgated. It is not, however, to be inferred that this code in its purity has been observed by all the Brahmans in all ages. On the contrary its maxims have been ignored or corrupted at different times and in different places, and rulers have interpolated laws of their own, for which they have claimed the sanction of Manu. The learned Hindus also hold that some of these laws were in force only during the first three ages of the world but are now obsolete; such laws however are neither numerous nor of marked importance.

INSTITUTES OF JUSTINIAN

Among the opening paragraphs of the first of the four books of the Institutes are the following, "*Justitia est constans et perpetua voluntas jus suum cuique tribuendi.*" Justice is the constant and perpetual disposition to render everyone his due.

"Jurisprudence is the knowledge of things divine and human; the science of what is just and unjust."

"The precepts of the law are to live honestly, to hurt no one, to give to every one his due."

"The Roman law like the Grecian is divided into written and unwritten. The written consists of the *plebiscites*, the decrees of the senate, ordi-

nances of the princes, edicts of the magistrates and answers of the licensed lawyers."

"The unwritten law is that which usage has approved, for daily customs established by the consent of those who use them take the character of law."

The third title is "Of the right of persons" and begins by dividing persons into freemen and slaves, "slavery is when one man is subject to the dominion of another according to the law of nations, though contrary to natural right." Slaves are defined as the issue of slave women, captives sold as such and persons above the age of twenty who allow themselves to be sold for a share of the price. The child of a woman free at the time of conception, or during pregnancy, or at the time of birth was free. A free man who became a slave and was afterward manumitted regained the status of a free man. Slaves might be manumitted in a great variety of ways, by public declaration in the face of the church or the presence of friends, by letter or by will, and at any time. Prior to Justinian's legislation freedmen were divided into three classes, those who obtained the greater liberty and became Roman citizens, those who became Latins, and the *Dedititii* who were little less than slaves still. Justinian abolished these distinctions and made all freedmen citizens. An insolvent master could not manumit his slaves and thereby deprive his creditors of payment. An insolvent master might make a slave his heir and thereby give him his freedom, charged with the payment of the master's debts. A slave made heir by the will of his master became free, whether so declared or not. By the law *Fusius Caninia* masters were limited in manumitting by testament. Justinian abolished the restrictions. Originally the master had full power to inflict death on a slave, and the property acquired by the slave of course belonged to the master. By the constitution of Antoninus restrictions were placed on the power of masters to inflict extraordinary punishments, and in cases of gross ill treatment it was provided that the slave might be sold to another master and the price given in lieu of the slave. The *patria potestas* over children was preserved with substantial modifications under Justinian. Sons *in potestate* could only marry with consent of the father, but if he were *non compos* a son or daughter might marry without his consent. Marriage with persons related in direct line, whether by blood or adoption, was prohibited, and also among collaterals within the limits of brothers and sisters, uncles and nieces or great nieces. A man could not marry his aunt by blood or adoption, nor his great aunt, but marriages between first cousins were allowed. Marriage with a wife's daughter or a daughter-in-law was prohibited, also with a wife's mother or a step-mother and all polygamy was forbidden. A son of a husband by a former wife might marry the daughter of a wife by a former husband and *e contra*. Children born out of lawful wedlock were not under the power of the father and did not inherit from him. A natural son who was made a

Decurian became subject to the father's power, and subsequent legal marriage legitimated children born before it. Adopted children were subject to paternal power the same as natural only where the adopting parent was of his blood. Adoption might be as a grand-son or grand-daughter. By adrogation the whole family of the adopted son passed under the power of the adopting parent. Adrogation was by imperial rescript and only allowed on conditions and compliance with certain forms.

At the death of the father the sons became independent, but grand-sons came under the power of their father, if living and they had not been emancipated. If the father were sentenced for a crime to be deported to an island to work as a slave in a mine, his sons ceased to be under his power. Although a son were a soldier, a senator or a consul he was still under his father's power, but the emperor by conferring the patrician dignity on him emancipated him from his father's power. Parents were allowed to manumit their children and grandchildren before the proper magistrate, and they might emancipate a son and retain power over his children or grandchildren. Parents might assign tutors to children not arrived at the age of puberty, and in default of such a testament the agnates, nearest male relation on the father's side, were vested with the tutelage, which corresponded for their protection to the paternal power, during infancy. Tutors of children not so provided for might be appointed by governors of the provinces, praefects and praetors, and, where the estate was small, by the inferior magistrates. The tutors administered the affairs of their pupils, and were bound to account to them for their estates when they arrived at the age of puberty. A person contracting with the pupil bound himself, but not the pupil. Tutelage terminated at the age of fourteen in males and twelve in females, and thereafter the estates of minors were placed under the charge of curators until they were twenty-five years old. Curators were appointed by the same magistrates as the tutors, and testamentary curators had to be confirmed by the magistrate. Curators were also appointed for the insane, deaf mutes or other incompetents, who were not able to manage their affairs. Tutors and curators might be compelled to serve and elaborate provisions were made to insure their faithfulness. A rather singular title is that which treats of diminution of condition of the person, of which there were three degrees. The greater is when a man loses both his liberty and rights as a citizen, the less or mesne when he loses his rights as a citizen but retains his liberty, and the least when an independent man comes under the power of another by adoption, or when a son is emancipated by his father. The right of fishing in rivers and ports is declared to be common.

The first book of the institutes treats of persons, the second of the division of things and the acquisition of dominion over them. Things common to mankind are declared to be the air, running water, the sea, rivers, ports, all the seashore over which the greatest winter flood extends, the banks of rivers, theatres, public grounds of a city, churches,

the walls of a city, grounds used for burial and other consecrated uses. Riparian ownership of river banks was allowed, but not of the sea coast. Property in wild beasts birds and fish was dependent on possession, and in case of escape the title was lost. Property in wild bees was gained by hiving them, and fresh swarms belonged to the owner of the hive from which they came out so long as they remained in sight of the owner, after that they belonged to the taker. Geese and fowls were subjects of ownership. Whatever was taken from enemies in war, including captives, belonged to the captors. Whatever was gradually added to land by alluvion became the property of the land-owner, but if suddenly moved in a body it remained the property of the former owner. An island formed in a river belonged to the riparian proprietors in equal parts if in the middle, and to the one if on one side of it. The title to articles manufactured from the material of another was in the owner of the material, if in such form that it could be again reduced to the material of which it was made, otherwise it belonged to the manufacturer. Where materials were mixed by consent, the whole belonged to both in common. If one built a house on his own land with the materials of another he became the owner of it, but liable to pay double value for the materials, and if one built with his own materials on land of another the house belonged to the owner of the land. But one in bona fide possession of land might be protected by exception of fraud against the claim of the owner, who refused to pay the value of the materials and cost of the labor. A tree planted in the ground of another belonged to the owner of the land. Grain also belonged to the owner of the soil, but the sower, if acting in good faith, might also be protected by an exception of fraud. A poem written on the paper or parchment of another belonged to the owner of the material, but the writer, if in possession of the material in good faith, might demand pay for the writing. A different rule was applied to a picture painted on the tablet of another, the painter being allowed to keep it on payment for the tablet.

The bona fide occupant of land by defective title was not required to account for mesne profits, but could hold only the fruits he actually had gathered. A rather strange mixture of logic and moralizing occurs in Lib. II T. I Sec. 37. "Among the produce of animals we not only reckon milk, skins and wool but also their young, and therefore lambs, kids, calves, colts and pigs, appertain by natural right to the usufructuary, but the offspring of a female slave cannot be thus considered, but belongs to the proprietor, for it seems absurd that man should be included as produce when nature has furnished all kinds of produce for his use." It certainly seems absurd that the child of the slave should be the property of the one entitled to the use of the mother, and equally so that it should belong to the master.

The ancient distinction between *res Mancipi* and *res nec Mancipi*, which had lost much of its significance, was entirely obliterated by Justinian,

who provided: "Things are also acquired by traditions, for nothing is more conformable to natural equity than to confirm the will of him who desires to transfer his property to another, therefore corporeal things of whatever kind may be delivered and when delivered by the owner are aliened. Stipendiary and tributary possessions, in the provinces, may be aliened in the same manner, for between these and the Italian estates we have now taken away all distinction, so that on account of a donation, a marriage portion or any other cause, stipendiary and tributary possession may undoubtedly be transferred by livery"; but it is provided that where the price is not paid or secured or credit given the title remains in the seller. The owner of the thing sold might entrust the delivery to another, who could deliver with equal effect. Property in a store house might be delivered by delivering the keys. Where the owner of goods threw them away, the finder got good title to them, but if thrown out of a ship in a storm to lighten it, anyone finding and appropriating the goods to his own use was guilty of theft. Things are divided into corporeal and incorporeal. "Things corporeal are tangible as lands, slaves, vestments, gold, silver and other things innumerable. Things incorporeal are those which are not tangible, but consist in rights and privileges, as inheritances, usufructs, uses and all obligations however contracted. "Of the same class are rights of rural and city estates termed servitudes." Servitudes of passage ways and aqueducts, over lands and of support from walls in cities, etc. are defined, and are said to require an estate in land to support them, the servitude being attached to the realty and not a personal privilege.

Usufruct is defined to be the right of using and enjoying without consuming the property of another. A usufruct could only be created by will, by fact or stipulation, and might be of lands, houses, slaves, cattle and other things, except those which are consumed in the use. The usufruct terminated on the death of the usufructuary, and also by the greater and middle diminution of condition, and from misuse of the thing given. On termination of the usufruct the whole property reverts in the proprietor. A distinction was further drawn between the usufruct and naked use, the former might be transferred, but the latter was personal and could not be.

Possession obtained in good faith of movables ripened into full title in three years, and of things immovable in ten years, if the parties are present and twenty years if one be absent, but no title could be gained by prescription of a free person, a fugitive slave or a sacred religious thing, nor for things stolen or seized by violence, even though bought in good faith, nor for things belonging to the imperial treasury. The possession of the ancestor and heir might be joined in making a prescription, as also that of seller and buyer. Title to property might also be passed by donation. This might be in anticipation of death, and not to take effect except on the event of the death of the donor, or a simple

gift *inter vivos*. A donation might in some cases be revoked for ingratitude. Donations in consideration of marriage, both antenuptial and post-nuptial, were recognized. A husband was prohibited from aliening or mortgaging property obtained as a marriage portion with his wife, even with her consent.

By the ancient law everything acquired by children under the power of the father, except the *peculium castresne*, property acquired by the son in military service, belonged to the father, but this rule was modified by Justinian, so that the father's full title extended only to that which was acquired by the son by means of the father's property. Whatever the son acquired by his own exertion remained his, subject to the right of the father to the usufruct of it. The father might emancipate the son, and in that case was entitled to the usufruct of one-half the property of the son as the price of emancipation. As to the acquisitions of slaves the master took everything. Where a slave was merely held in usufruct, the proceeds of his labors and dealings went to the usufructuary, but whatever he gained by other means, as gifts or inheritance, went to the proprietor.

A most important title of the law is that relating to testaments and inheritances. Great formalities were required in making testaments. It must be in writing, signed and sealed by the testator and seven witnesses, all in the presence of each other and at one time; and the name of the heir was required to be expressed in the handwriting of the testator or a witness. Women, minors under the age of puberty and slaves were incompetent as witnesses. No person under power of the testator could be a witness. Neither the heir nor his father or brothers under power of the father could be witnesses, but legatees were not rejected. The will might be written on a tablet of wax, paper, parchment or any other substance. A nuncupative will might be made without writing in the presence of seven witnesses. Strict formalities in making wills were dispensed with in the case of soldiers in actual service, and by the rescript of Trajan it was declared, that if the soldier "did in the presence of witnesses, purposely called, declare what person should be his heir and to what slaves he should give liberty, he shall be reputed to have made his testament without writing and his will shall be ratified." Persons under the power could not make a will, except of property acquired by military service. To disinherit a child it was necessary to mention him in the will, and this applied also to a posthumous child, to grandchildren whose parents were dead and to adopted children male and female. This rule did not apply in case of a soldier in actual service, a mother or a maternal grandfather. A testator might make his own slave his heir, but, if he named the slave of another, the gift could only be accepted by the master's order. The testator might name as many heirs and in such proportions as he pleased. A testator might provide for a substitution in case the heir named died within the age of puberty, but

not for an heir above that age, except by gifts in trust, *fidei-commisum*. Slaves and children under the power were bound to accept the inheritance and thereby to pay the debts of the testator, but a stranger named as heir could accept or reject at pleasure. Justinian modified the law so as to allow an acceptance chargeable with debts only to the value of the estate. A legacy was defined as "a gift directed by the deceased to be fulfilled by the heir." Specific property belonging to another might be given as a legacy, so that the heir would be bound to buy and deliver it or pay the value of it. Legacies might be of lands, slaves and debts as well as of money or chattel property. Very minute provisions were made for the construction and effect of wills, both in nominating heirs and legatees. The peculiar principles governing the Roman family and the possession of slaves, who might be affected by change of condition, occasion many refinements and distinctions in the law. Not more than three-fourths the inheritance was allowed to be given in legacies. An important branch of the law was that relating to trusts, *fidei-commisum*. This was a direction or request that the heir deliver the whole or a part of the estate to another in accordance with the terms imposed by the testator. At first compliance with such requests was not compulsory, but dependent on the good faith of the heir, but from the time of Augustus they were treated as binding and enforced by the praetors. The law with reference to these trusts was filled with nice questions and many refinements. As in case of legacies the trust might be to procure and deliver property belonging to another, in which case the heir must procure and deliver it or pay the value. The will might direct the manumission of a slave either of the testator or of another owner, and in the latter case the heir was bound to buy and manumit the slave. Property might also be disposed of by a codicil, which required no solemnity of execution, and did not necessitate the execution of a testament. An heir could not be made by a codicil, but property could be taken away from the heir by means of a trust. Testaments improvidently made could be avoided as to one-fourth of the estate on complaint of children under certain conditions. In default of a valid testament inheritances went to the proper heirs "*suos haeredes*," who at the death of the deceased were under his power; children inherited equally and descendants of deceased children took the shares of their parents. When there were no lineal descendants, the inheritance passed to the nearest agnates *i.e.*, those related through males, to the exclusion of the cognates; those related by adoption took the same as if related by blood. This rule was modified so as to admit sons and daughters of a sister to inherit from a deceased uncle along with the agnates, but their descendants could not take as long as there were agnates. The whole of the inheritance passed to those in the nearest degree equally. Mothers might inherit from sons who died without issue. In case of a failure of proper heirs or agnates the succession passed to cognates. Agnates related in the

tenth degree might inherit, but cognates only to the seventh. The degree of relationship of two persons was computed by counting from one to the common ancestor and from him down to the other, each generation in each line counting as a degree. The estate of a freed man in default of proper heirs went to his patron, and in certain cases the patron of a wealthy freedman was entitled to a share with the children of the freedman. Where no one succeeded to an estate as heir, the goods might be sold for the payment of debts. The subject of the disposition of property of deceased persons fills a full third of the Institutes.

The next title is *De Obligationibus*, which are divided into civil and Praetorian, and again into obligations by contract, by quasi-contract, by malfeasance and by quasi-malfeasance. Obligations by contract were classified as arising from a thing, from words, by writing or by consent of parties. The first of these was termed a *mutuum* and included loans of money or goods of any sort to be returned in kind, and which could be enforced by the action *certi condictio*. In the case of the *mutuum* the property in the thing passed by the transfer. Where the article delivered was to be used and returned, it was called a *commodatum*. In case of the *mutuum* the receiver was bound absolutely to make return, but in case of the *commodatum* he was held to the highest diligence in taking care of it, but not liable for loss by superior force or extraordinary accident, unless he took the thing abroad and lost it through perils of the journey, in which case he was liable. In case of a deposit the depositary was only liable for loss through his fraud and not for negligence. In case of a pledge to secure a debt the bailee was held to strict diligence in preserving the property. Verbal obligations arose from question and answer, and the forms anciently in use are given thus. *Spondes?* Do you undertake? *Spondeo*. I undertake. *Promittis?* Do you promise? *Promitto*. I promise. *Dabis?* Will you deliver. *Dabo*. I will deliver. These particular words are however declared unnecessary, and any forms of expression having the same meaning are equally binding. The performance of a contract might be required immediately and absolutely, in the future, or conditionally on the happening of some event, and was given effect according to its terms, but where acts were stipulated for, a penalty for non performance was necessary. Two or more persons might be bound to perform the same obligation or entitled to enforce it, but a single payment discharged all. Of two promissors one might be bound absolutely and the other only conditionally. The contracts of a slave inured to the benefit of his master, and, if owned by several masters, to each in proportion to his ownership. There were judicial stipulations, where security was required by a judge against fraud, or for pursuing a slave who had fled; Praetorian stipulations, required to insure compliance with some order, and conventional stipulations, "and of these stipulations there are as many kinds as of

things to be contracted for." All manner of property was subject to stipulation, but slaves and persons under the power could not stipulate with their masters, though a son could bind himself by his contract with a person other than his father. Pupils under tutorship could only contract with the consent of their tutors, and the contracts of madmen, mutes and deaf persons were invalid. A verbal obligation between absent persons was void, but a writing was valid, unless it could be clearly shown that one or the other of the parties to the contract was absent from the place where it was made during the whole day of its date. A stipulation might be made to take effect just before or after the death of the obligor or obligee, though before Justinian's time it would not have been binding. No man could stipulate for another. "Therefore if a man should stipulate that a certain thing shall be given to Titus it will not avail, but, if he add a penalty as do you promise to give me so many *aurei* if you do not give the thing stipulated to Titus, the penalty may be enforced." But a stipulation for the benefit of the stipulator and another was good. One who undertook for the performance of another was not bound, unless he promised under penalty. A stipulation was ineffectual where it failed to show that the parties referred to and agreed on the same thing, or where performance was illegal, immoral or impossible. Suretyship was recognized and enforced against the *fide-jussors* in all kinds of contracts. The custom of money lenders, then as now, was to exact security, and the *fide-jussor* stood in the same case as the modern surety. He and his heirs alike were held, and his obligation might precede or follow the contract of the principal, and each surety was bound for the whole debt. Contribution among sureties was not enforced, unless demanded at the time of the suit on the obligation. If one surety paid the whole debt of an insolvent principal he had to bear the whole loss. The obligation of the surety might be less, but never greater than that of the principal, and the *fide-jussor* might recover the sum paid from his principal. A written obligation for the payment of money could not be avoided on the ground that the money was not advanced, unless an exception was brought within two years. "Obligations are made by consent in buying, selling, letting, hiring, partnerships and mandates. An obligation thus entered into is said to be contracted by consent, because neither writing nor the presence of parties is absolutely necessary. Nor is delivery necessary to make the contract take effect, for it suffices that the parties consent, hence these contracts may be entered into by absent parties by letters or messengers." "The contract of buying and selling is perfected as soon as the price is agreed upon, although it is not paid nor even an earnest given." A distinction is drawn between sale and barter, and in support of it a passage from the *Iliad* is quoted. On a sale the buyer at once becomes liable for the price and subject to the risk of loss, whether delivery was made or not, but a sale might be conditional. In distinguishing sales from contracts of location and conduction, letting and hiring, a singular question is sug-

gested, namely where lands are transferred in perpetuity with a reservation of a fixed yearly rental, whether this is a sale or a hiring. It was finally settled that it was neither, but a contract resting on its own terms and under which, if there were no express provision otherwise, in case of a total destruction of the property the loss should fall on the proprietor, but a partial loss must be borne by the tenant. The hirer of property was bound to take such care of it as the most diligent would take of his own.

General partnerships as to all kinds of business, and special as to a single line, were recognized, and also the right to share profits and losses in any proportions agreed on, but the share of gain only was mentioned in the contract, losses were governed by the same rule. A partnership might be determined at the pleasure of either party, but, if one renounced to gain a fraudulent advantage, he might be compelled to share it with the other partner. Death of a partner or a sale of all his property to pay his debts also worked a dissolution of the partnership. Partners were held to the same care in the management of the partnership property that they exercised with reference to their own.

Mandates for the transaction of any business were divided into five classes, solely for the benefit of the mandator, jointly for his benefit and that of the mandatary, solely for the benefit of a third person, jointly for the mandator and a third person or jointly for the benefit of the mandatary and a third person, but a mandate solely for the benefit of the mandatary was null! A mandate could only be for a lawful act, and was revokable before performance. The mandatary might refuse to accept the mandate as he pleased, but having accepted he was bound to perform or promptly renounce, and an action of mandate was given to enforce performance.

Quasi contracts resulting from transactions not expressly authorized, or from dealings necessitated by the relation of the parties, as tutor and pupil or tenants in common of lands, heir and legatee, payments by mistake, etc. were recognized as binding and enforceable. Obligations might be discharged by payment by the debtor or by any one for him or by acceptillation. By what was termed the Aquilian stipulation, all forms of obligation might be reduced to a set form and discharged by an acceptillation, by which payment in full was acknowledged. An obligation might also be discharged by a novation, through which another took the place of the original debtor, but to constitute a novation the intent to discharge the original debtor must be expressed, otherwise both the original and subsequent promissor would be bound.

Obligations might also arise from malfeasance and quasi-malfeasance. Thefts were divided into manifest, where the thief was caught in the act or while carrying away the stolen property, and not manifest, where not so caught. A theft was called *conceptum* when the thing stolen was found on the person in the presence of witnesses. For a manifest

theft the thief was liable to pay quadruple, and for theft not manifest double, the value of the thing stolen. The conversion of a pledge or of property otherwise entrusted to a bailee without the consent of the bailor was regarded as a theft. Theft of the person might be committed of free persons under the power, and a debtor might steal his own property, as in case of a pledge. Accessaries were liable as well as principals, but no action of theft could lie between parents and children or master and slave, though it might against the accessory of the child or slave. The action might be brought by any person interested in the safety of the thing stolen, as a creditor or bailee for a pledge. Where property was loaned, the owner might sue the thief or the borrower, but not both. An action of theft was always for the penalty, another and separate form of action being allowed for the recovery of the property. Where property was taken by force, by the action *vi bonorum raptorum* the owner might recover quadruple damages, whether manifest or not manifest, if brought within one year, but if afterward, the single value only, but the recovery included the value of the property which could not be specifically recovered. Where property was forcibly seized under a claim of ownership or right, the taker was liable to a penalty of the value of it, and this applied to forcible seizure of houses and lands as well as of movables.

An action for injurious damage was given for killing a slave or cattle. No liability attached for necessarily killing a robber, or for killing another by accident without fault. If a soldier killed a slave while exercising in his appointed place he was not liable, but any other person killing a slave by accidentally striking him with a javelin was liable. A surgeon, who having performed an operation on a slave allowed him to die of neglect, was liable, as also for want of skill. A mule driver, who killed a slave from want of care or skill as a driver, was liable. One who killed a slave or beast of another was liable for the highest price which the slave or beast would have brought within that year, and if a slave should have been made heir and killed before entry into the heirship and the inheritance be thereby lost to the master, this also might be added as damages. Other consequential damages were also recoverable. Both a civil and a criminal action might be prosecuted by the master. An action was also allowed for every injury to slaves, cattle or property, but the recovery was limited to the highest price that could have been obtained within thirty days previous to the injury. An action was given for slander, libel, insults to women and various other wrongs, and damages awarded according to circumstances, among which were the condition of the injured person, "so that one estimate may be adopted in the case of a steward or agent and a lower one in the case of an inferior slave." An injury might be aggravated by the place of its commission, as in the theater, market or presence of the praetor, or by the rank of the injured party, and an injury inflicted on a senator by one

of mean condition, on a parent by a child or a patron by his freedman, called for a heavier punishment than where the parties were equal in rank. For every injury the injured party might prosecute a civil or criminal action, and the suit might also be maintained against one who counseled or caused the injury to be done, but the right of action was lost unless complaint was promptly made.

A judge might be sued by an action of quasi-malefeasance for giving an unjust judgment, and was subject to such penalty as a superior judge might impose. The occupier of a chamber, from which anything was thrown or spilt causing damage, was liable for the injury regardless of the person who committed the act, and must pay double damages. The master of a ship or inn was liable to be sued for quasi-malefeasance for every theft or damage committed in his ship or inn. Actions in court were divided into those *in personam*, where it was sought to enforce a contract, recover damages or compel the performance of some act or duty, and *in rem* where the subject of the action was some specific property, whether recovery of the thing itself was sought or merely the enforcement of a right with reference to it, as of an easement. Fictions were allowable to enable a trustee, who, having no title to the property entrusted to his care, should be deprived of the possession of it, to recover by alleging a prescriptive right. Goods of a debtor, fraudulently transferred to avoid payment, might be recovered by the creditors. There were many and varied forms of action for the enforcement of different rights *in personam* and *in rem*. Although fathers and masters were not legally bound for the debts of sons and slaves, an action *de peculio* was allowed against them, so that a recovery of the debt of the son or slave might be had to the extent of his *peculium* or separate estate. Actions were also allowed to determine whether a person was free or slave, legitimate or bastard, and these were classed as actions *in rem*. There were also mixed actions, as for goods taken by force, in which a recovery of both the price of the goods taken and triple its value as damages was allowed. The idea of mixture rests, not on recovery of the property itself and damages, but value and penalty. Another kind of mixed action, more logically so-called, was for the division of property among heirs or tenants in common, in which the judge had power to apportion the property in equal or unequal proportions and award compensation to those receiving less than their share. "All actions are for the single, double, triple or quadruple value; for no action extends farther." The single value was sued for on a stipulation, a loan, a sale, a purchase, letting and hiring, a mandate, and very many other causes, the double value in actions of theft not manifest, of injury by the law *Aquilia* and some cases of deposit, also for corrupting a slave or detaining a legacy left to a holy place, for triple value when any one inserts a greater sum than is allowed in a libel of convention, that officers may exact a greater fee from the defendant; for quadruple value

for manifest theft, putting in fear, for giving money to another to corruptly influence him to do or not do a particular business, or for extorting illegal fees from a defendant. Actions were also classified as of good faith or strict right. Those of good faith were from buying and selling, letting and hiring, business transacted, mandate, deposit, partnership, tutelage, loan, pledge, partition of things owned in common, the demand of an inheritance and those in prescribed words for estimates and commutation. In all actions of good faith the judge had full power to determine according to justice and right how much should be restored to the plaintiff, and to deduct from the recovery any sum due from the plaintiff to the defendant, and this right of set off was extended to cases of strict right, except for deposits. Some actions were styled arbitrary, where the judge was allowed to exercise his discretion in awarding judgment. If a plaintiff intentionally demanded more than his debt, unless a minor or acting under mistake in certain cases, he lost his debt under the ancient practice, but this was modified so that a penalty of triple damages was substituted, though to just what cases this applied it is difficult to determine. If a plaintiff modestly asked less than was due, he might still recover the whole amount. Where there was a mistake in describing the property sought, an amendment was allowed to correct it. In some cases a suit might be for the whole or so much as the situation allowed, as for the debt of a son or slave to be paid only out of his *peculium*, or where a woman sued for her marriage portion where the husband was unable to pay the whole. In these cases the judgment would be for the amount of the *peculium* or the husband's estate. "If any one sues his parent, patron or partner, the plaintiff cannot recover a greater sum than his adversary is able to pay. It is the same if one is sued for his donation."¹ Where a debtor turned out all his property to his creditors and afterward acquired more, they might sue for the balance unpaid, but could not recover judgment for more than the debtor was able to pay. A master could be sued on contracts made by his slave by his direction, and for contracts in a business entrusted to the slave, and also for the contracts of a free person or the slave of another entrusted with the conduct of his shop or business. Where a slave borrowed money and expended the whole or a part for the benefit of the master, the master was liable to pay all that was expended for his benefit, and the slave's *peculium* only was liable for the balance. Different forms of action, called *tributoria*, *de peculia* and *de in rem verso*, were adapted to the different classes of cases against a master on account of the transactions of his slave. Similar rules applied to the dealings of children under the

¹ Lib. IV-Tit. XI-Sec. XXI.

² Lib. IV-Tit. VI-Sec. XXXVIII.

power, but a suit could not be maintained either against the child or parent for money lent the child while under the power.

Noxal actions were allowed against the master for the thefts, robberies and injuries of his slaves, and the master might pay the judgment or surrender the slave in satisfaction of it, and if the slave could satisfy his new master in money he might be manumitted on application to the praetor, against the will of the new master. A noxal action followed the ownership of the slave, and in case of a sale the new master became liable, and of manumission the freedman himself. A cause of action against a free man, who afterward became a slave, was converted into a noxal action against the slave. No cause of action could arise in favor of a master against his slave, nor in favor of the slave against the master. Under the ancient law a similar forfeiture for the act of son or daughter was allowed as in case of a slave, but this ceased to be the law before Justinian's time. Noxal actions were allowed for injuries caused by horses, cattle, etc. which were accustomed to do such injury, and by giving up the animal the owner was discharged from further liability. There was no liability for injuries caused by dogs or wild beasts, unless kept near a road or passage way, in which case the keeper was liable for double damages.

A suit might be brought in the name of the party interested or of a procurator, tutor or curator, though by the ancient law suit in the name of another was only permitted in a public cause, for liberty or tutelage. Whoever was appointed to sue for another was called a procurator, and no particular formality of appointment was required. By the ancient practice a defendant was required to give security for the performance of the judgment, and where a suit was brought by a proctor, tutor or curator, he had to give security that his acts would be ratified by his principal, but by the law of Justinian's time a defendant was not required to give security for the payment of the judgment, but only for his personal appearance till the cause was ended, and this security might be with sureties or by a promise with or without oath according to the quality of the defendant. If a procurator failed to produce written authority or confirmation of his power to act by his client in court, he was required to give security for the ratification of his acts. A defendant when sued might appear, name his procurator and give the required security or, in case of his failure to appear, any other person might defend for him on giving security for the payment of the judgment.

There were various limitations as to the time within which an action might be brought, those given merely by the praetor's authority being generally limited to a year, the duration of his term of office, while those arising under the laws, the decrees of the senate and edicts of the emperors, were mostly allowed for a longer period, and an action for manifest theft was perpetual. Penal actions arising from theft, robbery,

injury and consequential damages could not be maintained against, but might be in favor of the heir, except actions of injury. Not all actions on contracts survived to the heir, as where a testator commits a fraud through which nothing is added to the property of the heir. Judgments in penal actions contested by the principals, however, passed both to and against the heir. An action might be settled and dismissed at any time before judgment on payment by the defendant. A defendant sued on a contract extorted by fraud or fear was allowed an exception of fraud or fear, and in a suit on a stipulation for the repayment of money the defendant might have an exception *pecuniae non memoralae*, that he had not received the money. Exceptions were of many kinds, some allowed by law, some by the authority of the praetor, some were perpetual, and peremptory, others temporary and dilatory, the former barring, the latter merely delaying the action; but a plaintiff was subject to costs and a penalty for commencing suit prematurely. A soldier or a woman could not act as a procurator. To the exception of the defendant the plaintiff might plead matter of avoidance by replication, to which, though apparently sufficient, the defendant might reply by a triplication, and so on till an end was reached. Whatever defense a debtor could make was generally available equally to his bondsmen, except where the debtor turned over all his goods, and was entitled to an exception *si bonis cesserit*.

Interdicts were forms of words by which the praetor commanded or prohibited something to be done, and were mainly used in controversies concerning the possession of property. They were divided into prohibitory, restoratory and exhibitory, by which the purpose of each is fairly expressed, the latter supplying to some extent the place of our writ of habeas, and by which the production of a slave, freedman or child might be required and rights with reference to his custody determined. By an interdict called *Quorum Bonorum* the possession of goods of a deceased person might be taken from the heirs and given to a person appointed to take charge of them by the praetor. For the retention of possession of property there were interdicts styled *uti possidetis* for the retention of houses and lands and *utrubi* for the possession of movables, ownership depending in many cases on possession, which might be maintained in person, by another or even by intention. An interdict for the recovery of possession, called *unde vi*, was allowed where one had been forcibly evicted from house or land, and the penalty of forcible seizure of property was that the guilty party forfeited the property if it belonged to him, and if it did not, not only was he required to make restitution, but also to pay the value of it as a penalty for the seizure. Interdicts might be simple or double, simple where the plaintiff required something to be exhibited or restored. *Uti possidetis* and *utrubi* were double interdicts in which each party was regarded as much plaintiff and defendant as the other.

A defendant could not plead to an action till he swore that he believed his defense to be valid. In some cases by a denial the defendant exposed himself to double damage. A plaintiff was also required to swear that he did not sue maliciously, but believing he had a good cause. The advocates on both sides were also required to take a similar oath. An unjust litigant was liable to pay damages and costs of suit to his adversary. In some cases infamy resulted to the party condemned in a civil suit, as of theft, robbery, injury and fraud, and also of tutelage, mandate, deposit and partnership.

The first step in a law suit was *in jus vocando*, calling the adverse party into court. Children and freedmen were not allowed to call their parents or patrons into court without first obtaining leave of the praetor. Judges were admonished not to decide otherwise than as the laws, constitutions and customs directed. The form given for a judgment in a noxal action is certainly a model of brevity and definiteness. "*Publium Moevium Lucio Titio in decem aureos condemni aut noxam dedere.*" In actions *in rem* the recovery was not only of the property but of its fruits and increase as well.

Public actions were such as might be prosecuted by anyone. Among capital offenses were enumerated any act against the emperor or the republic, adultery, sodomy, murder, rape, carrying weapons for the purpose of killing and causing death by magic or by the sale of poison medicines. For the crime of parricide, deemed most execrable of all, the law Pompeia prescribed the following punishment, "he shall be sewed up in a sack, with a dog, a cock, a viper and an ape, and being confined in this narrow deadly enclosure shall be thrown into the sea or river according to the situation of the place." The killing of a child or any person occupying the relation of parent was within the law. Forgery of a will or other instrument by a slave was punished with death, by a freeman, with deportation. Judges, who while in office embezzled public funds, were punishable with death, as were also their accomplices, but others for like offenses were punishable with deportation only. Kidnapping also might be punished with death or a milder punishment. Other offenses were generally less severely punished, by deportation, condemnation to work in the mines, fines and forfeiture of goods.

The foregoing is a brief outline of the system of laws which had been developed at Rome and in the empire during a period of approximately 1300 years.

THE PENAL CODE OF CHINA

(TA-TSING LEU-LEE)

The following summary of the provisions of the penal code of China is made from a translation of the code in force under the Ta-Tsing dynasty, made by Sir George Thomas Staunton and printed by Cordell & Davis, London, in 1810. This gives a view of the law as it stood before it was materially modified by foreign influences.

Though denominated a penal code, it is not merely a code providing punishments for the violation of what in European and American states would be denominated crimes, but would be here denominated a code of civil as well as criminal laws.

That the Chinese have long comprehended the necessity for fixed rules governing the conduct and decisions of officers and magistrates, is clearly shown by the concluding paragraph of the preface to the edition published by authority of the emperor Shun-Chee, the first of the Manchu dynasty in 1647.

"Wherefore, officers and magistrates of the interior and exterior departments of our empire, be it your care diligently to observe the same, and to forbear in future to give any decision, or to pass any sentence, according to your private sentiments, or upon your unsupported authority.

"Thus shall the magistrates and people look up with awe and submission to the justice of these institutions, as they find themselves respectively concerned in them: the transgressor will not fail to suffer a strict expiation for his offenses, and will be the instrument of deterring others from similar misconduct; and, finally, the government and the people will be equally secured for endless generations in the enjoyment of the happy effects of the great and noble virtues of our illustrious progenitors."

The purposes sought to be accomplished by the laws as expressed in the prefatory edict of the Emperor Kaung-Hee second of the present dynasty, appear to be as commendable as those on which any European code or American constitution is framed.

"The chief ends proposed by the institution of punishments in the empire, have been to guard against violence and injury to repress inordinate desires, and to secure the peace and tranquillity of an honest and unoffending community.

"Laws have accordingly been enacted, numerous, as well as particular in their application, and subsequently varied and augmented at different times, as circumstances were found to require, but without ever losing sight of those principles of affection and benevolence, of which our Illustrious Predecessors, who laid the foundation of these institutions, were invariably observant."

The manner of accomplishing these purposes, however, differs radically

from that pursued in the West. The code begins with preliminary tables exhibiting the scale of punishments, the instruments to be used and rules governing pecuniary payments to be made in lieu of corporal punishment, and some other matters.

The principle of Table III is the reverse of that prevailing in Europe during feudal times. The higher the rank of the offender, the greater the pecuniary compensation required in lieu of the punishment indicated by Table I. Table II prescribes a scale of pecuniary redemption by redeemable punishments based on the same principle. The highest scale is imposed on those well able to pay, less on those not altogether des-

TABLE I

Scale of Punishment Offenses against Public and Private Property.

	Pecuniary Mal- versation	Theft	Bribery for a lawful object	Bribery for an unlawful ob- ject	Theft of Public Property	Embezzlement of Public Pro- perty
	Amount in oz. of Silver	Ditto	Ditto	Ditto	Ditto	Ditto
20 blows with the bamboo	1 or less	.	. . .	. . .	. .	. . .
30 blows with the bamboo	1 to 10	.				. .
40 blows with the bamboo	20 —	.	.	.	.	. . .
50 blows with the bamboo	30 —		. .	.	. .
60 blows with the bamboo	40 —	1 or less	1 or less	.	.	.
70 blows with the bamboo	50 —	10 —	10 —	1 or less	1 or less	.
80 blows with the bamboo	60 —	20 —	20 —	1 to 5 oz.	1 to 5 oz.	1 or less
90 blows with the bamboo	70 —	30 —	30 —	10 —	10 —	1 to 2, 5
100 blows with the bamboo	80 —	40 —	40 —	15 —	15 —	5
60 blows with the bamboo and 1 year's banishment	100 —	50 —	50 —	20 —	20 —	7, 5
70 blows with the bamboo and 1½ year's banishment	200 —	60 —	60 —	25 —	25 —	10

TABLE I (Continued)

	Pecuniary Mal- versation	Theft	Bribery for a lawful object	Bribery for an unlawful ob- ject	Theft of Public Property	Embezzlement of Public Pro- perty
	Amount in oz. of Silver	Ditto	Ditto	Ditto	Ditto	Ditto
80 blows with the bamboo and 2 year's banishment	300 —	70 —	70 —	30 —	30 —	12.5
90 blows with the bamboo and 2½ year's banishment	400 —	80 —	80 —	35 —	35 —	15
100 blows with the bamboo and 3 year's banishment. Dist. lees and upwards.	500 — and up- wards	90 —	90 —	40 —	40 —	17.5
100 blows with the bamboo and perpet. banish. 2000		100 —	100 —	45 —	45 —	20
100 blows with the bamboo and perpet. banish. 2500	. .	110 —	110 —	50 —	50 —	25
100 blows with the bamboo and perpet. banish. 3000	.	120 —	120 —	55 —	55 —	30
Death—to be strangled	.	Upwards of 120 oz.	Upwards of 120 oz.	80 to 120 If an in- ferior Officer.	80 in ex- treme Cases	. . .
Death—to be beheaded	. .	. . .	.	. . .	. . .	80 in ex- treme Cases

TABLE III

Scale of pecuniary Redemption in such cases as are not legally excluded from the Benefit of general Acts of Grace and Pardon, and which, though not necessarily redeemable, have, by an Edict of the 8th Year of the Emperor Kien-Lung, been made redeemable upon Petition.

Rank of the Offender	Sentence	Pecuniary Commutation in Ounces of Silver
An Officer above the 4th Rank . . . }	Death by Strangulation or Decollation	. . . 12,000
“ of the 4th Rank . . . }		. . . 5,000
“ of the 5th or 6th Rank . . . }		. . . 4,000
“ of the 7th or any inferior Rank, or a Doctor of Literature . . }		. . . 2,500
A Graduate or Licentiate . . . }		. . . 2,000
A Private Individual . . . }		. . . 1,200
An Officer above the 4th Rank . . . }	Perpetual Banishment	. . . 7,200
“ of the 4th Rank . . . }		. . . 3,000
“ of the 5th or 6th Rank . . . }		. . . 2,400
“ of the 7th or any inferior Rank, or a Doctor of Literature . . }		. . . 1,500
A Graduate or Licentiate . . . }		. . . 1,200
A Private Individual . . . }		. . . 720
An Officer above the 4th Rank . . . }	Temporary Banishment of Blows with the Bamboo	. . . 4,800
“ of the 4th Rank . . . }		. . . 2,000
“ of the 5th or 6th Rank . . . }		. . . 1,500
“ of the 7th or any inferior Rank, or a Doctor of Literature . . }		. . . 1,000
A Graduate or Licentiate . . . }		. . . 800
A Private Individual . . . }		. . . 480

titute, still less on the young, the old and females. Punishments with the bamboo authorized to be actually inflicted are by Table IV made much less than the nominal punishments indicated in Table I, thus 10 blows are reduced to 4, 50 to 20 and 100 to 40. The bamboo to be used in inflicting the blows is required to be a straight and polished piece, the branches cut away, 5 *che* and 5 *tsun* in length, in breadth $1\frac{1}{2}$ *tsun* by 1 *tsun*, in weight, $1\frac{1}{2}$ *kin*. These are the dimensions of the lesser bamboo which in use is required to be held by the smaller end. The *che* is a measure of a trifle over $12\frac{1}{2}$ inches of which the *tsun* is a tenth part. The *kin* exceeds the English pound by about one-third. The dimensions given are for the lesser bamboo. The greater is of the same length, 2 *tsun* by $1\frac{1}{2}$, and weighing 2 *kin*. The *Kia* or *Cangue* fastened about the neck as a punishment is described as “a square frame of dry wood, 3 *Che* long, 2 *Che* 9 *Tsun* broad, and weighing in ordinary cases 25 *Kin*.” “The greater and less criminals shall all be confined by an iron chain 7 *Che* long and weighing 5 *Kin*.” “The hand-cuffs shall be made of dry wood 1 *Che* and 6 *Tsun* long by 1 *Tsun* in thickness and shall be used to confine capital offenders of the male sex only.” Following

these tables, descriptions of punishments and the systems used to inflict them, comes table VI entitled "Degrees Of Relationship And Of Mourning, seemingly a wide departure from the subject of the preceding tables. Perhaps nothing better illustrates the peculiarities of Chinese customs, principles and laws than this table which is as follows:

"The mourning for the nearest among relations in the first degree, shall be worn for three years, and shall be made of the coarsest hempen cloth, without being sewn at the borders.

The mourning for other relations in the first degree shall be worn for three or five months, and be made of middling hempen cloth, sewn at the borders.

The mourning for relations in the second degree, shall be worn for nine months, and be made of coarse linen-cloth.

The mourning for relations in the third degree, shall be worn for five months, and be made of middling coarse linen-cloth.

The mourning for relations in the fourth degree, shall be worn for three months, and be made of middling fine linen-cloth.

The full mourning for three years, shall be worn:

By a son, for his father or mother.

By a daughter, for her father or mother, when living under the parents' roof, although affianced to her intended husband, or although once married, if afterwards divorced and sent home.

By a son's wife, for her husband's father or mother.

By a son and his wife, for his father's substituted first wife; for the wife of his father substituted in the place of his mother, and for the wife of his father, who nursed him.

By an inferior wife's son and his wife, for his natural mother, and for his father's first wife.

By an adopted son and his wife, for his adopted parents.

By a grandson and his wife, for his paternal grand-parents.

By a wife, whether the first or inferior one, for her husband."

The first section of the 1st book, begins: "The lowest degree of punishment is a moderate correction inflicted with the lesser bamboo, in order that the transgressor of the law may entertain a sense of shame for his past, and receive a salutary admonition with respect to his future, conduct," and follows with schedules of the degrees of offenses; the number of blows to which they subject the offender nominally and the number actually to be inflicted; from the 1st to the 5th with the lesser bamboo and those ranging from 60 to 100 blows with the larger bamboo. The next scale of punishments is that of temporary banishment to a distance not exceeding 500 *Lee*, 10 *Lee* being equal to about 3 geographical miles. Punishment with the bamboo is also inflicted together with the banishment. Perpetual banishment with 100 blows of the bamboo to distances of from 2000 to 3000 *Lee* is the 4th degree of punishment. The 5th and

highest degree is death by strangulation or decollation. Capital sentences, except for atrocious crimes, are not to be executed until ratified by the Emperor.

"Instruments of torture of the following dimensions, may be used upon an investigation of a charge of robbery and homicide:

"The instruments for compressing the ankle-bones, shall consist of a middle piece, 3 *Che* 4 *Tsun* long, and two side-pieces, 3 *Che* each in length; the upper end of each piece shall be circular, and 1 *Tsun* 8 decimals in diameter; the lower ends shall be cut square, and, 2 *Tsun* in thickness: At a distance of 6 *Tsun* from the lower ends, four hollows, or sockets, shall be excavated, 1 *Tsun* 6 decimals in diameter, and 7 decimals of a *Tsun* in depth each; one, on each side the middle-piece, and one in each of the other pieces, to correspond. The lower ends being fixed and immovable, and the ankles of the criminal under examination being lodged between the sockets, a painful compression is effected by forcibly drawing together the upper ends.

"The instrument of torture for compressing the fingers, shall consist of 5 small round sticks, 7 *Tsun* in length, and 45/100 of a *Tsun* in diameter each: the application of this instrument is nearly similar to that of the former.

"In those cases wherein the use of torture is allowed, the offender, whenever he contumaciously refuses to confess the truth, shall forthwith be put to the question by torture; and it shall be lawful to repeat the operation a second time, if the criminal still refuses to make a confession. On the other hand, any magistrate who wantonly or arbitrarily applies the question by torture, shall be tried for such offense, in the tribunal of his immediate superior; and the latter shall make due inquiry into the circumstances, on pain of being himself accused before the supreme court of judicature at Peking, if guilty of wilful concealment or connivance.

"Ordinary prisoners are to be confined with the small chain: the *Cangue*, or moveable pillory is never to be used, except expressly directed by the laws; nor to exceed 25 *Kin* in weight, unless otherwise specially determined and expressed.

"When a sentence of banishment is passed against the relations, or others, implicated in the guilt of an offender, the corporal punishment, which is usually inflicted in different degrees, proportionate to the duration of the banishment, shall be understood to be altogether remitted.

"From the 25th of the 4th moon, to the last day of the 6th moon of each year (in consideration of the heat at that season), the punishment of the lesser bamboo shall be remitted altogether; and that of the greater bamboo shall be reduced one degree, and further mitigated, by inflicting only eight for every ten blows to which the offender is condemned. This indulgence shall not, however, be extended to any other offenders beside those who are actually to be discharged within

the period above mentioned. During the same interval, a particular degree of relaxation shall also be allowed to prisoners in general; and offenders sentenced to wear the *Cangue* shall be permitted to lay it aside, provided they can find securities for their subsequently fulfilling the law, by resuming it at the expiration of the said period.

"Offenders convicted of thieving, robbing, wounding, or assaulting shall be excluded from the benefit of the last-mentioned regulation.

"No capital execution shall take place during the period of the first or sixth moons of any year; and in the event of any conviction of a crime in a court of justice during the said intervals, for which the law directs immediate execution, the criminal shall, nevertheless, be respited until the first day of the moon next following.

"The mitigation of the law concerning the infliction of corporal punishment during the summer months, shall take effect without any particular reference to the Emperor."

In Section II offenses of a treasonable nature are defined, and include, rebellion, disloyalty, desertion (which includes the murder of father, mother, uncle, aunt, grandfather, or grandmother), parricide massacre which is the murder of 3 or more persons in one family, sacrilege. "Impiety is discoverable in every instance of disrespect or negligence toward those to whom we owe our being, and by whom we have been educated and protected. It is likewise committed by those who inform against or insult such near relations while living, or who refuse to mourn for their loss, and to show respect to their memory when dead." "Discord in families is the breach of the legal or natural ties which are founded on connections to whom, when deceased, the ceremony of mourning is legally due." Insubordination and incest, are also classed as treasonable.

"The crimes here arranged and distributed under ten heads, being distinguished from others by their enormity, are always punished with the utmost rigor of the law; and, when the offense is capital, it is excepted from the benefit of any act of general pardon; being likewise, in each case, a direct violation of the ties by which society is maintained, they are expressly enumerated in the introductory part of this code, that the people may learn to dread, and to avoid the same."

Section III designates the privileged classes. The first includes the imperial household and the Emperor's relations as well as those of his mother, grandmother and wife, within the first, second and third degrees. The second class includes ancient and distinguished servants of the crown. The third those who have performed illustrious service, especially in war. The fourth those eminent for wisdom and virtue, the fifth, men distinguished for great ability, the sixth those especially distinguished for zeal in the public service:

"This privilege is to be enjoyed by all those who possess the first rank in the empire; all those of the second, who are at the same time

employed in any official capacity whatever; and all those of the third, whose office confers any civil or military command."

"The Emperor esteems and protects those who are distinguished for their wisdom and eminent services, even to the second and third generation."

Persons included within these privileged classes, cannot be tried for offenses other than those of a treasonable nature, and by the express command of the Emperor. A similar privilege is extended to the father, mother, grandmother, wife, son and grandson, of persons belonging to either of these classes, and the final decision of all such causes is made by the Emperor. Offenses committed by officers at court or in the provinces, are required to be reported to the Emperor and a trial can only be had by his command. An inferior officer may report injurious treatment by his superior, as well as a superior officer make complaint of his subordinate. Tartars enrolled as banner-men are to be punished with the whip instead of the bamboo, and when guilty of offenses punishable with banishment, are to be confined with the *cangue* for a number of days proportioned to the prescribed banishment, for 1 year 20 days, 2 years 30 days, and in lieu of perpetual banishment from 45 to 90 days. Very elaborate provisions are made with reference to mitigations of punishment, in consideration of the relation of different parties to the offense, and of their conduct with reference to confessions, voluntary surrender and aid in procuring the arrest of participants in crime. There is a large class of offenses, punishable as crimes in which there is no intentional wrong doing, founded on imputable misconduct and negligence. The punishment in these cases is mitigated, however. Judicial officers are liable to punishment for unjust judgments, either of acquittal or conviction, and the clerk of the court as well as the judge must suffer, but with a reduction of three degrees where the sentence has been executed, and four where it has not been. A reduction of sentences by a degree means dropping down to the next lower one in the scale, as from 50 blows to 40, two years banishment to a year and a half. As a part of their punishment for dereliction all public officials are liable to degradation or dismissal from office.

"When any offender under sentence of death for an offense not excluded from the contingent benefit of an act of grace, shall have parents or grandparents who are sick, infirm, or aged above seventy years, and who have no other male child or grandchild above the age of sixteen to support them, beside such capitally convicted offender, this circumstance, after having been investigated and ascertained by the magistrate of the district, shall be submitted to the consideration and decision of His Imperial Majesty."

Astronomers convicted of offenses punishable with banishment suffer 100 blows and may redeem themselves from further punishment by the

payment of a fine. There is also a mitigation of punishments in favor of artisans, musicians and women, for minor offenses. Persons under fifteen or over seventy, except for heinous offenses, are allowed to redeem themselves. Expedition in the dispatch of public business is strictly enjoined and punishment is meted out for failure to execute orders, transmit or deliver dispatches or carry out any imperial orders., "Five days shall be allowed to discharge business of small importance, ten days for business of ordinary importance and twenty days for business of high importance." A distinction is made between principles and accessaries differing somewhat from that observed in Europe and America.

"As for instance; if a man engages a stranger to strike his elder brother—the younger brother shall be punished with ninety blows, and two years and a half banishment, for the offense of striking his elder; but the stranger shall be only punished with twenty blows, as in common cases of an assault. Also, if a younger relation introduces a stranger to steal to the amount of ten *leang* or ounces of silver of the family property, he shall only be punished as wasting, or disposing of without leave, the family property to that extent, whereas the stranger shall be punished as in common cases of theft." (Sec. 30).

"All relations connected in the first and second degree and living under the same roof, maternal grand-parents and their grandchildren, fathers and mothers-in-law, sons and daughters-in-law, grandchildren's wives, husbands' brothers and brothers' wives, when mutually assisting each other, and concealing the offenses, one of another, and moreover, slaves and hired servants assisting their masters and concealing their offenses, shall not, in any such cases, be punishable for so doing."

"In like manner, though they should inform their relations of the measures adopted for their apprehension, and enable them to conceal themselves, and finally to effect their escape, they shall still be held innocent."

"When relations in the third and fourth degrees assist and protect each other from punishment in the manner here described, they shall for such conduct be liable to punishment, but only in a proportion of three degrees less than would have been inflicted on strangers under the same circumstances." (Sec. 32).

Degrees of relationship are counted quite differently from the rules either of the Roman or common law.

"Whatever is declared in the laws to concern relations in the first degree, grand-parents or grandchildren, shall likewise be understood to extend equally to great-grand-parents, and great-great-grand-parents, great-grand-children, and great-great-grand-children, except in cases of constructive crimes, when the law shall be taken literally."

"Also, the father's principal wife, the father's wife substituted in the place of the principal wife after her death, the father's wife substituted

in the place of the natural mother upon her death, and the adopted mother, shall all hold equal rank with the natural mother, and be understood to be referred to, in all laws in which the mother of the party concerned is only stated generally, except in the case of such mother having been divorced, or in the case of her killing, or attempting to kill, such son-in-law."

"Also, except in cases of constructive offenses, whatever the law states relative to the sons, shall be applicable to the daughters also." (Sec. 38).

"A day shall be considered to have elapsed when the hundred divisions are completed—at present, according to the Imperial Almanac, the day consists of ninety-six divisions). A day's work or labour shall, however, be computed only from the rising to the setting of the sun."

"A legal year shall consist of 360 days complete, but a man's age shall be computed to the number of years of the cycle elapsed since his name and birth were recorded in the public register."

"When the law speaks of several persons, three at least are to be understood; but when simply stating the circumstances of an agreement or combination, any number not less than two may be implied." (Sec. 41).

The imperfection of the code and the difficulties attending the decision of cases not clearly provided for, are recognized in several places. Section XLIV provides:

"From the impracticability of providing for every possible contingency, there may be cases to which no laws or statutes are precisely applicable; such cases may then be determined, by an accurate comparison with others which are already provided for, and which approach most nearly to those under investigation, in order to ascertain afterwards to what extent an aggravation or mitigation of the punishment would be equitable.

Provisional sentence conformable thereto shall be laid before the superior magistrates, and after receiving their approbation, be submitted to the Emperor's final decision. Any erroneous judgment which may be pronounced in consequence of adopting a more summary mode of proceeding, in cases of a doubtful nature, shall be punished as a wilful deviation from justice."

"All the appointments and removals of officers, whether civil or military, shall depend solely upon the authority of the Emperor. If any great officer of state presumes to confer any appointment upon his own authority, he shall suffer death by being beheaded, after remaining in prison the usual time." (Sec. 48.)

"The official messengers who are employed in the several districts of the empire under the jurisdiction of the cities of the first, second, and third order, for the transmission of dispatches relative to ordinary public business, or to the punishment of public transgressors, shall perform the services upon which they are respectively employed, within the periods which, with a due regard to the distance, and other circumstances,

are in each case by law established. For one day's delay beyond the legal period, they shall be liable to a punishment of 10 blows, which shall be increased one degree, until it amounts to 40 blows, for every additional day's delay. If the governing magistrates in any of the aforementioned districts and divisions of command, do not, when the administration of public affairs requires, send immediately the necessary orders for instructions to the officers subject to their authority, such neglect shall be punished with 100 blows."

"The attention due to the repairing and inspecting of roads and bridges; to accidents and affrays; to the seizing of criminals; confiscation of property, and to any other such specific objects, being noticed and enforced elsewhere in this code, the neglect thereof is not to be punished as a breach of this general article." (Sec. 51).

As official appointments are in theory at least, based on the qualifications of candidates, as ascertained from the regular literary examinations, it is regarded as of great importance, that the examiners be fair and make true reports.

"Whoever confers degrees of honour on persons who are not worthy, or who are under any disqualifications; and whoever, on the contrary, refuses at the proper time to confer such degrees upon those who are entitled to them by their merit, as well as duly qualified, shall be punished with 80 blows for a single instance of such offense, and one degree more severely, as far as 100 blows, for every two additional instances which may be proved upon investigation. If the individual so improperly graduated is aware of his being ineligible, he shall be punished as a participator in the offense, but otherwise shall be held innocent."

"If the presiding examiner of the merits of the candidates designedly makes a false report in any instance, by elevating or depressing their respective claims, the punishment of such examiner shall be two degrees less than that of the officer who confers the degrees improperly. If the report is erroneous, but not designedly false, the punishment shall be less by three degrees, but liable in all cases to be increased whenever there is conviction of bribery and corruption." (Sec. 52.)

"The laws and statutes of the empire have been framed with deliberation, are sanctioned with appropriate penalties against transgressors, and are published to the world for perpetual observance."

"All the officers and others in the employ of government ought to study diligently, and make themselves perfect in the knowledge of these laws, so as to be able to explain clearly their meaning and intent, and to superintend and ensure their execution."

"At the close of every year, the officers and other persons employed by government, in every one of the exterior and interior departments, shall undergo examination on this subject before their respective superiors, and if they are found in any respect incompetent to explain the

nature, or to comprehend the several objects, of the laws, they shall forfeit one month's salary when holding official, and receive 40 blows when holding any of the inferior, situations."

"All those private individuals, whether husbandmen, or artificers or whatever else may be their calling or profession, who are found capable of explaining the nature, and comprehending the objects, of the laws, shall receive pardon in all cases of offenses resulting purely from accident, or imputable to them only from the guilt of others, provided it be the first offense, and not implicated with any act of treason or rebellion."

"Whosoever, in the employ of government, fraudulently perverts or misconstrues, or presumptuously changes, abrogates or confounds the law upon any case, so as to produce disturbance and insurrection in the country, shall suffer death by being beheaded, after the usual period of imprisonment." (Sec. 61.)

"Whenever an Imperial Edict is issued on any subject, whoever wilfully omits the execution of any thing that is commanded therein, shall be punished with 100 blows. In the case of the edict of the Imperial prince elect, the punishment shall be the same. A failure in any such respect, from neglect or inadvertence, shall be punished three degrees less severely."

"Moreover, any one who delays or postpones the execution of an Imperial edict for one day, shall be punished with 50 blows, and one degree more severely as far as 100 blows for each additional day of delay." (Sec. 62.)

Book II of the Second Division of which Section LXI is the first, relates to the conduct of magistrates and enjoins the performance of various official duties.

"When a family has omitted to make any entry whatever in the public register, the head or master thereof, if possessing any lands chargeable with contributions to the revenue, shall be punished with 100 blows; but if he possess no such property, with 80 blows only, and the family shall in the former case be registered as accountable for future public service, according to the amount of its taxable property, and in the latter, according to the number of male individuals of full age of which it consists."

"When any head or master of a family, has among his household strangers who constitute, in fact, a distinct family, but omits to make a corresponding entry in the public register, or registers them as members of his own family, he shall be punished with 100 blows, if any such stranger possesses taxable property, and with 80 blows if he should not possess any; and in all cases, the register shall be duly corrected, by the insertion of a description of such strangers as a distinct family." (Sec. 75.)

"All persons whatsoever shall be registered according to their accus-

tomed professions or vocations, whether civil or military, whether postmen, artisans, physicians, astrologers, laborers, musicians, or of any other denomination whatever; wherever a military employment is represented as a civil one, or an artisan endeavours to pass himself as a mere laborer, or when any other device is employed to lessen the individual's liability to the public service, such individual shall be punished with 80 blows, and the magistrate who negligently consents to such omission, irregularity, or confusion in the entries on the public register, shall be equally punishable."

"Whoever falsely represents himself to belong to any military establishment in garrison, or in the field, and thereby evades all public service whatever, shall receive 100 blows, and be sent into the ulterior and perpetual military banishment." (Sec. 76.)

"No religious houses of the sects of Foe and Tao-se, except those which have been heretofore lawfully constituted and established, shall be privately maintained, appropriated, or endowed, whether upon a new, or in addition to an old foundation, or in any other manner whatsoever." (Sec. 77.)

"Whoever appoints his heir and representative unlawfully, shall be punished with 80 blows. When the first wife has completed her fiftieth year, and has no children living, it is allowed to appoint the eldest son by the other wives to the inheritance; but if any other than the eldest of such sons is so appointed, it shall be deemed a breach of this law."

"If a person, not having sons himself, educates and adopts the son of a kinsman, having other sons, but afterwards dismisses such adopted son, such person shall be punished with 100 blows, and the son shall be sent back to, and supported, as before, by the adopting parents."

"Nevertheless if the adopting parent shall have subsequently had other sons, and the natural parents, having no other, are desirous of receiving their son back again, they shall be at liberty so to do."

"Whoever asks for, and receives into his house as his adopted son, a person of a different family name, is guilty of confounding family distinctions, and shall therefore be punished with 60 blows; the son so adopted shall, in such cases, always be returned to his family. In like manner, whoever gives away his son to be adopted into a family of a different name, shall suffer the punishment decreed by this law, and receive such son back again. Nevertheless, it shall be lawful to adopt a foundling under three years of age, and to give the child the name of the family into which it is adopted; but such adopted child shall not be entitled to the inheritance upon failure of the children by blood."

"If the relative appointed to the inheritance, on failure of children, is not the eldest in succession, it shall be deemed a breach of this law; the relative so appointed shall be sent back to his place in his own family, and the lawful heir appointed in his stead."

"Whoever brings up in his family, as a slave, the male or female child of a freeman, shall be punished with 100 blows, and the child shall regain its freedom." (Sec. 78.)

"In all districts of the empire, 100 families shall form a division, and shall consult together, in order to provide a head and ten assessors, who are to attend successively, in order to assist in the collection of the taxes, and duly to ascertain the performance of all other public duties and services."

If there are any other persons who, falsely assuming authority under the characters of deputies, assistants, and the like, create disturbances and harass the people, they shall be punished with 100 blows and banished."

"The elders, who are to be appointed to these offices, shall be chosen among the most respectable persons of maturer age who belong to the district, and no person shall be eligible to, or accept, the said offices, who has ever held any civil or military employments, or who has ever been convicted of any crime. Whoever accepts the same, in defiance of this law, shall be punished with 60 blows, and dismissed; the officer of government, who sanctions such undue appointment, shall be punished with 40 blows, at the least, and eventually suffer such further punishment as he may be liable to, in consequence of being guilty of receiving a bribe for an unlawful purpose." (Sec. 83.)

"Sons or grandsons who form to themselves a separate establishment for their parents and grand-parents, and also make a division of the family property, shall, provided such parents and grand-parents personally prosecute, be punished, on conviction, with 100 blows."

"Also, the sons of the same parents, who shall form to themselves separate establishments, and divide their respective proportions of the inheritance, previous to the expiration of the lawful period of mourning, shall be punished with 80 blows, provided they are convicted upon an information laid by an elder relation in the first degree, and provided that they had not been expressly directed to do so in the last will of their parent deceased." (Sec. 87.)

"Any younger and inferior member of a family, living with the others under the same roof, who applies to his own use, or otherwise disposes of, the joint family-property without permission, shall be punished with 20 blows, if the value amounts to 10 ounces of silver; and one degree more severely as far as 100 blows, for every additional 10 ounces value."

"An unjust or partial division of the patrimony between the elder and younger branches of a family, upon their separation, shall likewise be punished agreeably to the tenor of this law." (Sec. 88.)

"All poor destitute widowers and widows, the fatherless and childless, the helpless and the infirm, shall receive sufficient maintenance and protection from the magistrates of their native city or district, whenever

they have neither relations nor connexions upon whom they can depend for support. Any magistrate refusing such maintenance and protection, shall be punished with 60 blows."

"Also, when any such persons are maintained and protected by government, the superintending magistrate and his subordinates, if failing to afford them the legal allowance of food and raiment, shall be punished in proportion to the amount of the deficiency, according to the law against an embezzlement of government stores." (Sec. 89.)

There are numerous regulations designed to enforce the collection of taxes and prevent frauds on the revenue. Provision is made by Section XCI for an abatement of taxes in districts suffering from a temporary calamity as excessive rain, overflows, drought, unseasonable frosts, locusts and the like. Public officers are required to examine and report any such cases. The system of mortgaging land is somewhat peculiar and seems to be designed to protect the revenue.

"Whoever takes lands or tenements by way of mortgage, without entering into a regular contract, duly authenticated and assessed with the legal duty by the proper magistrate, shall receive 50 blows, and forfeit to government half the consideration money of the mortgage. If the mortgagor does not transfer to the mortgagee unreservedly the whole produce of the land upon which the taxes are charged and made payable to government, he shall be punished in proportion to the extent of the property, in the following manner: if from one to five *meu*, with 40 blows, and one degree more severely for each five additional *meu*, until the punishment amounts to 100 blows; the land so illegally mortgaged shall be forfeited to government."

"If the proprietor of lands and tenements already mortgaged, attempts to raise money thereon by a second mortgage, the amount obtained upon such false pretences shall be ascertained, and the offender punished accordingly, as in the case of an ordinary theft to the same extent, except that he shall not be liable to be branded."

"The pecuniary consideration received by the fraudulent mortgagor shall be restored always to the mortgagee, unless such mortgagee is himself privy to the unlawfulness of the transaction, in which case it shall be forfeited to government."

"The said mortgagee and the negotiator of the bargain, when either of them is acquainted with the unlawfulness of the transaction, shall moreover receive the same punishment as the mortgagor. In all such cases, the first and lawful mortgagee shall remain in possession."

"If, after the period, specified in the deed by which any lands or tenements are professed to be mortgaged or pledged by the proprietor, is expired, the said proprietor offers to redeem his property by the payment back of the original consideration upon which he had parted with it, it shall not be allowed the mortgage to refuse to comply;

any instance of such refusal shall subject him to the punishment of 40 blows, and to the forfeiture of all the produce of the land which he may have reaped after the expiration of such period. Nevertheless, this law shall only have effect when the proprietor is really able at the expiration of the prescribed period to redeem his lands, and not otherwise." (Sec. 95.)

The duty of cultivating the land is strictly unjoined.

"In every district of the empire, when the lands which have been entered on the public registers as liable to the land-tax, and as subjecting the proprietors to the demands of personal service, are, without any cause, such as inundation, drought, or other calamity, neglected and omitted to be duly cultivated; as, for instance, if the established mulberry, hemp, and other similar plantations are not duly kept up, the head inhabitant of the district shall be held responsible, and punished according to the relative extent of the uncultivated to that of the cultivated portion of the registered lands in his district. If the uncultivated portion is one-tenth of the whole, he shall be punished with 20 blows, and one degree more severely, as far as 80 blows, for each additional tenth uncultivated. The presiding magistrate of the city of the third order, to which the district is subjected, shall likewise be punishable, but less severely by two degrees in each case than the head inhabitant. The assessors of the chief magistrate shall suffer punishment as accessaries to his offense."

"The individual proprietor also, who suffers his land to remain uncultivated, or who neglects his mulberry, hemp, or other plantations, shall be punished according to the proportion which the neglected part bears to the whole of his registered property, if it amounts to one-fifth, with 20 blows, and one degree more severely for every additional fifth left uncultivated."

"His lands shall moreover be assessed with the land-tax in proportion to the amount of the produce they are judged capable of yielding, and the contribution shall be levied on the proprietor accordingly." (Sec. 97.)

Trespasses on land and taking the fruit belonging to others is punished with the bamboo.

"When a marriage is intended to be contracted, it shall be, in the first instance, reciprocally explained to, and clearly understood by, the families interested, whether the parties who design to marry are or are not diseased, infirm, aged, or under age; and whether they are the children of their parents by blood, or only by adoption; if either of the contracting families object, the proceedings shall be carried no further; if they still approve, they shall then in conjunction with the negotiators of the marriage, if such there be, draw up the marriage-articles, and determine the amount of the marriage presents."

"If, after the woman is thus regularly affianced by the recognition of

the marriage-articles, or by a personal interview and agreement between the families, the family of the intended bride should repent having entered into the contract, and refuse to execute it, the person amongst them who had authority to give her away shall be punished with 50 blows, and the marriage completed agreeably to the original contract. Although the marriage-articles should not have been drawn up in writing, the acceptance of the marriage-presents shall be sufficient evidence of the agreement between the parties."

"If after the female is affianced, but previous to the completion of the marriage, her family promises her in marriage to another, the person having authority to give her away shall be punished with 70 blows; if such promise is made after the first marriage is actually completed (that is to say, the bride is personally presented to and received by the bridegroom), the punishment shall be increased to 80 blows."

"If the family of the intended bridegroom after having agreed as aforesaid, repents of the contract, and makes marriage-presents to another woman, the same punishment shall be inflicted, as in the cases already mentioned. The bridegroom shall be obliged to receive his originally intended bride; and the female, to whom he is secondly affianced, shall retain the marriage-presents made to her, and be at the same time at liberty to marry another person." (Sec. 101.)

"Whoever lends any one of his wives, to be hired as a temporary wife, shall be punished with 80 blows,—whoever lends his daughter in like manner, shall be punished with 60 blows; the wife or daughter in such cases, shall not be held responsible."

"Whoever, falsely representing any of his wives as his sister, gives her away in marriage, shall receive 100 blows, and the wife consenting thereto, shall be punished with 80 blows."

"Those who knowingly receive in marriage the wives, or hire for a limited time the wives or daughters of others, shall participate equally in the aforesaid punishment, and the parties thus unlawfully connected, shall be separated; the daughter shall be returned to her parents, and the wife to the family to which she originally belonged; the pecuniary consideration in each case shall be forfeited to government. Those who ignorantly receive such persons in marriage, contrary to the laws, shall be excused, and recover the amount of the marriage-presents." (Sec. 102.)

"Whoever degrades his first or principal wife to the condition of an inferior wife or concubine, shall be punished with 100 blows. Whoever, during the life-time of his first wife, raises an inferior wife to the rank and condition of a first wife, shall be punished with 90 blows, and in both cases, each of the several wives shall be replaced in the rank to which she was originally entitled upon her marriage."

"Whoever, having a first wife living, enters into marriage with another female as a first wife, shall likewise be punished with 90 blows; and the marriage being considered null and void, the parties shall be separated, and the woman returned to her parents." (Sec. 103.)

"If any man or woman enters into an equal marriage during the legal period of mourning for a deceased parent, or any widow enters into a second and equal marriage within the legal period of mourning for her deceased husband, the offending party shall be punished with 100 blows."

"If it is not an equal match, that is to say, if a man takes an inferior wife from a subordinate rank or a woman connects herself in marriage as one of the inferior wives of her husband, the punishment attending a breach of this law shall be less by two degrees." (Sec. 105.)

"Whoever marries a wife or a husband upon equal terms of espousal having a father, mother, grand-father or grand-mother at the same time under confinement in prison for a capital offense, shall be punished with 80 blows;—whoever at such time receives in marriage, or becomes by marriage, a subordinate wife, shall suffer punishment less by two degrees."

"Nevertheless, if any such person enters into the marriage state at such period, by the express command of his or her parent or grand-parent in prison, no punishment shall ensue, provided the usual feast and entertainment is omitted; otherwise a punishment of 80 blows shall be inflicted." (Sec. 106.)

"Whenever any persons having the same family-name intermarry, the parties and the contractor of the marriage shall each receive 60 blows, and the marriage being null and void, the man and woman shall be separated, and the marriage-presents forfeited to government." (Sec. 107.)

"In general all marriages between persons who through another marriage are already related to each other in any of the four degrees, and all marriages with sisters by the same mother, though by a different father, or with the daughters of a wife's former husband, shall be considered as incestuous, and punished according to the law against a criminal intercourse with such relations."

"A man shall not marry his father's or mother's sister-in-law, his father's or mother's aunt's daughter, his son-in-law's or daughter-in-law's sister, or his grandson's wife's sister, on pain of receiving 100 blows for such offense."

"Whoever marries his mother's brothers or mother's sister's daughter, shall receive 80 blows, and in these as well as the foregoing cases the marriage shall be annulled and the marriage-present forfeited." (Sec. 108.)

"Whoever marries a female relation beyond the fourth degree, or the widow of a male relation equally remote, shall be punished with

100 blows. Whoever marries the widow of a relation in the fourth degree, or of a sister's son, shall be punished with 60 blows, and one year's banishment. Whoever marries the widow of any nearer relation, shall be punished according to the law against incestuous connexions with such persons. Nevertheless, when the connexion had been broken by a divorce, or an intervening marriage with a stranger, the offence shall in general be only punished with 80 blows."

"Whoever receives in marriage any of his father's or grandfather's former wives, or his father's sisters, shall, whether they have been divorced or re-married, in all cases suffer death, by being beheaded. Whoever marries his brother's widow, shall be strangled."

"The foregoing cases, in general apply to first wives only, and the punishment of marrying the inferior wives of such relatives as aforesaid, shall be less in each case by two degrees."

"Whoever marries any female relation in the fourth, or any nearer degree, shall be punished according to the law concerning incest, and all such incestuous marriages shall be null and void." (Sec. 109.)

Officers of government marrying into families subject to their jurisdiction or having an interest in legal proceedings before them, are subject to 80 blows. For forcibly abducting and marrying a woman death by strangulation is the penalty. An officer or clerk of government who marries a female musician or comedian is punishable with 60 blows and the marriage declared void. Priests of Foe or Tao-sse, who marry, are punishable with 80 blows and expulsion from the order. A master who obtains in marriage for his slave the daughter of a free man, is punishable with 80 blows and the members of her family, who knowingly consent, are subject to like punishment.

"If a husband repudiates his first wife, without her having broken the matrimonial connexion by the crime of adultery, or otherwise; and without her having furnished him with any of the seven justifying causes of divorce, he shall in every such case be punishable with 80 blows. Moreover, although one of the seven justifying causes of divorce should be chargeable upon the wife, namely, (1) barrenness; (2) lasciviousness; (3) disregard of her husband's parents; (4) talkativeness; (5) thievish propensities; (6) envious and suspicious temper; and, lastly, (7) inveterate infirmity; yet, if any of the three reasons against a divorce should exist, namely, (1) the wife's having mourned three years for her husband's parents; (2) the family's having become rich after having been poor previous to, and at the time of, marriage; and, (3) the wife's having no parents living to receive her back again; in these cases, none of the seven aforementioned causes will justify a divorce, and the husband who puts away his wife upon such grounds, shall suffer punishment two degrees less than that last stated, and be obliged to receive her again."

"If the wife shall have broken the matrimonial connexion by an act of adultery, or by any other act, which by law not only authorizes but requires that the parties should be separated, the husband shall receive a punishment of 80 blows, if he retain her."

"When the husband and wife do not agree, and both parties are desirous of separation, the law limiting the right of divorce shall not be enforced to prevent it."

"If, upon the husband's refusing to consent to a divorce, the wife quits her home and absconds, she shall be punished with 100 blows, and her husband shall be allowed to sell her in marriage; if, during such absence from her home, she contracts marriage with another person, she shall suffer death, by being strangled, after the usual period of confinement." (Sec. 115.)

There are various other provisions relating to marriage, and divorce and denouncing penalties for misconduct of the parties. Book IV treats of public property and coinage, the collection of revenue and imposes penalties for misconduct in reference thereto. There are numerous provisions enjoining, on all officers handling public funds, watchfulness of each other and the duty to report any misconduct. Book V. regulates duties and customs. Its first provision is as follows:

"Whoever, not having a license, engages in a clandestine traffic in salt, that is to say, possesses any quantity however small of this article for sale, shall be punished with 100 blows, and banished for three years." (Sec. 141.)

An important part of the revenues of the state is derived from the salt monopoly maintained by the government. Various other articles of merchandise are subject to taxation. The law against usury like all other laws, is enforced with the bamboo; the limit allowed as interest is rather high being 3% per month, but arrears of interest cannot exceed the principal. The payment of the debt and interest is also enforced with the bamboo, and a delay of three months in the payment of a debt of 5 *leang* or more is punished with 10 blows and 10 more for each additional delay of a month up to 40 blows. The failure to pay larger debts may subject him to more blows. A creditor who attempts to collect his debt by forcibly seizing the property of the debtor is liable to 80 blows; if he accepts the wife or children of his debtor in pledge for payment, he shall be punished with 100 blows, if the creditor takes the wife or children and carries them off by force, he is subject to an increase of two degrees of punishment, and if guilty of criminal conduct toward the wife must suffer death by strangulation. Trustees having charge of the goods or live stock of another, who misappropriate or waste the property are liable to the bamboo, and frauds are similarly punished. Book VII treats of sales and markets, and provides for appointments of commercial agents in every city, public market and village

district, who are required to keep registers of the ships and merchants who arrive and the quantity of their goods. Section 154 contains a provision which might give ample employment to the officials, if put in force in America.

"When the parties to the purchase and sale of goods do not amicably agree respecting the terms, if one of them monopolizing, or otherwise using undue influence in the market, obliges the other to allow him an exorbitant profit; or if artful speculators in trade, by entering into a private understanding with the commercial agent, and by employing other unwarrantable contrivances, raise the price of their own goods, although of low value, and depress the prices of those of others, although of high value, in all such cases the offending parties shall be severally punished with 80 blows each for their misconduct."

"When a trader, observing the nature of the commercial business carrying on by his neighbor, contrives to suit or manage the disposal or appreciation of his own goods in such a manner, as to derange, and excite distrust against the proceedings of the other, and thereby draws unfairly a greater proportion of profit to himself than usual, he shall be punished with 40 blows."

"The exorbitant profit derived from any one of the foregoing unlawful practices, shall, as far as it exceeds a fair proportion, be esteemed a theft, and the offender punished accordingly, whenever the amount renders the punishment provided by the law against theft more severe than that hereby established and provided. The offender shall not however be branded as in the ordinary cases of theft." (Sec. 154.)

The use of false weights or measures is punishable with 60 blows and public officers conniving at the use of false weights are punishable with from 70 to 100 blows.

"If a private individual manufactures any article for sale, which is not as strong, durable, and genuine, as it is professed to be, or if he prepares and sells any silks or other stuffs of a thinner or slighter texture and quality, narrower, or shorter, than the established or customary standard, he shall be punished with 50 blows. (Sec. 156.)

Book I of the 4th division makes provision for the observance of the sacred rites and religious duties and denounces severe punishment for failure to observe the ceremonies which are so important a part of Chinese customs. For the details of the various observances, references are made to the Book of Rites. The health of the emperor is cared for by subjecting his physician to from 60 to 100 blows for any mistakes in his medicine, and his cook to like punishment for improper ingredients in his food or failing to test the dishes served by tasting.

"If either the superintending or dispensing officer, or the cook, introduces into His Majesty's kitchen any unusual drug, or article of food, he shall be punished with 100 blows, and compelled to swallow the same." (Sec. 163.)

"If a son on receiving information of the death of his father or mother, or a wife, receiving information of the death of her husband, suppress such intelligence, and omits to go into lawful mourning for the deceased, such neglect shall be punished with 60 blows, and one year's banishment. If a son or wife enters into mourning in a lawful manner, but previous to the expiration of the term, discards the mourning habit, and forgetful of the loss sustained, plays upon musical instruments and partakes of festivities, the punishment shall amount for such offense to 80 blows."

"Whoever on receiving information of the death of any other relation in the first degree than the above-mentioned, suppresses the notice of it, and omits to mourn, shall be punished with 80 blows; if previous to the expiration of the legal period of mourning for such relation, any person casts away the mourning habit, and resumes his wonted amusements, he shall be punished with 60 blows."

"When any officer or other person in the employ of government, has received intelligence of the death of his father or mother, in consequence of which intelligence he is bound to retire from office during the period of mourning; if, in order to avoid such retirement, he falsely represents the deceased to have been his grand-father, grand-mother, uncle, aunt, or cousin, he shall suffer the punishment of 100 blows, be deposed from office, and rendered incapable of again entering into the public service."

"On the other hand, if any officer of government falsely alleges the pretext of mourning, while his parents are still living, or after they are so long dead that the period of mourning had expired, he shall be liable to the same punishment as in the opposite case last mentioned."

"If either of the foregoing misrepresentations should be designed to effect any criminal purpose, the offender shall be liable to any aggravation of the punishment which may be conformable to the law, applicable to the case under such circumstances."

"If, previous to the expiration of the lawful term of absence in consequence of the loss of a parent, any officer or other person in the employ of government, returns to, and resumes his office or command, he shall be deprived thereof, and punished with 80 blows. If the superior officers of the same department are aware that the return of the mourner is premature, and nevertheless permit him to resume his functions, they shall be equally punishable; but if not aware of the fact, they shall not be responsible."

"Those officers of government, who hold remote and important stations and commands, shall not be bound by the above regulations on the arrival of the intelligence of the death of their parents, as the line of conduct they are to pursue on such occasions will always be determined by express orders from the Emperor." (Sec. 179.)

"If any person, in order to hold an office under government, absents

himself from a father, mother, paternal grandfather, or grandmother, who is either upwards of 80 years of age, or totally disabled by any infirmity, while such near relation has no other male offspring above sixteen years of age, to perform the duties of filial piety; or if on the contrary, any person being in office, solicits permission to retire to his family, upon a falsely alleged pretext of the age or infirmity of any such near relation as aforesaid, the offender, in either of these opposite cases, shall suffer a punishment of 80 blows."

"Whoever plays on musical instruments, or partakes of feasts at home or abroad, while her husband, or his or her father, mother, paternal grandfather or grandmother, are in confinement upon a charge of a capital offense, shall also be liable to the aforesaid punishment." (Sec. 180.)

Funerals are strictly regulated, and failure to observe the established rites is punishable with from 80 to 100 blows.

The 5th division contains the military laws for the government of the imperial palace, the guards and the army. The regulations are quite minute and voluminous and not deemed of especial interest. The size of the empire of China with its single head renders rapid communication between its remote parts necessary. The Chinese were far in advance of the Europeans in establishing a system of transmitting dispatches, and it was only with the advent of railroads and telegraphs that the postal system of the West became superior to that of China. It is provided in Section 238:

"The military post-soldiers charged with the transmission of government orders and dispatches, must proceed on their route at the rate of 300 *lee* in a day and a night: If through dilatoriness they exceed the time to the extent of three quarters of an hour (an hour and a half European computation), they shall be punished with 20 blows; and the punishment shall increase by a progressive ratio of one degree for each additional delay of three-quarters of an hour, until it amounts to 50 blows."

"Immediately that the dispatches of government arrive at any military post or station, the post-master shall not fail to forward them, whether many or few, under the charge of the soldiers who are placed under his jurisdiction for that purpose."

Not only are provisions made for swift messengers, but post-houses are stationed at convenient distances along all the roads and the post master general of the district is required to keep them in repair under penalty of 50 blows. Severe penalties are denounced against messengers failing in their duty and against any one interfering with them in making their journeys.

The 6th subdivision is devoted to criminal laws. High treason is thus defined and punished:

"High treason, is either treason against the state, by an attempt to subvert the established government; or treason against the Sovereign,

by an attempt to destroy the palace in which he resides, the temple in which his family is worshipped, or the tombs in which the remains of his ancestors are deposited."

"All persons convicted of having been principals or accessaries to the actual or designed commission of this heinous crime, shall suffer death by a slow and painful execution."

"All the male relations in the first degree, at or above the age of sixteen, of persons convicted as aforesaid; namely, the father, grandfather, son, grandsons, paternal uncles, and their sons respectively, shall, without any regard to the place of residence, or to the natural or acquired infirmities of particular individuals, be indiscriminately beheaded."

"All the other male relations at or above the age of sixteen, however distant their relationship, and whether by blood or by marriage, shall likewise suffer death, by being beheaded, if they were living under the same roof with the treasonable offender, at the time the offence was committed."

"The male relations in the first degree, under the age of sixteen and the female relations in the first degree, of all ages, shall be distributed as slaves to the great officers of state." (Sec. 254.)

"All persons convicted of writing and editing books of sorcery and magic, or of employing spells and incantations, in order to agitate and influence the minds of the people, shall be beheaded, after remaining in prison the usual period. If the influence of such acts shall not have extended beyond a few persons, the criminal shall be banished perpetually to the distance of 3000 *lee*; and generally, the punishment shall be proportionate to the nature of the case, and therefore more or less severe according to circumstances."

"All persons who are guilty of retaining in their possession, and concealing from the magistrates, any books of the above description, shall be punished with 100 blows, and banished for three years." (Sec. 256.)

"All persons guilty of stealing the consecrated oblations offered up by the Emperor to the spirits of Heaven and Earth, or any of the sacred utensils, cloths, meat-offerings, and precious stones used on such occasions, shall whether principals or accessaries to the offense, whether previously entrusted or not with the charge of the said articles, in all cases, be beheaded." (Sec. 257.)

"All persons guilty of having been principals or accessaries to the crime of stealing an Imperial edict, after it has received the impression of the great Imperial seal, shall be beheaded." (Sec. 258.)

"All persons concerned as principals or accessaries in the offense of forcibly rescuing, or attempting to rescue any lawful prisoner, shall suffer death by being beheaded, after confinement during the usual period." (Sec. 267.)

Theft is punishable by a graduated scale ranging from 60 blows for

stealing one ounce of silver to death by strangulation for taking 120 ounces. Larceny of property is punishable according to the same scale of value. Where the theft is from a relation by blood or marriage in the first degree, it is reduced five degrees, from those in the second degree, four degrees, in the third, three and in the fourth two and from other relations one degree less than if from a stranger.

"All persons guilty of digging in, and breaking up another man's burying-ground, until at length one of the coffins which had been deposited therein, is laid bare and becomes visible, shall be punished with 100 blows, and perpetual banishment to the distance of 3000 *lee*."

"Any person who, after having been guilty as aforesaid, proceeds to open the coffin, and uncover the corpse laid therein, shall be punished with death, by being strangled, after undergoing the usual confinement." (Sec. 276.)

This section is long and contains many provisions for punishing the desecration of burying grounds. The punishment of robbery is generally capital but there are various grades of this offense to which less penalties are assigned.

The distinction between principal and accessory of this code makes the contriver of the crime principal and the others accessories. Actual participation in the perpetration of the crime is not made the basis of distinction between them. Attempts and designs to commit crime though not carried into execution are also punishable in a less degree. Homicide in various degrees is defined and punished with death.

"Any person convicted of a design to kill his or her father or mother, grandfather or grandmother, whether by the father's or mother's side; and any woman convicted of a design to kill her husband, husband's father or mother, grandfather or grandmother, shall, whether a blow is or is not struck in consequence, suffer death by being beheaded. In punishing this criminal design, no distinction shall be made between principals and accessories, except as far as regards their respective relationships to the person against whose life the design is entertained. If the murder is committed, all the parties concerned therein, and related to the deceased as above mentioned, shall suffer death by a slow and painful execution. If the criminal should die in prison, an execution similar in mode shall take place on his body. The accessories more distantly related, shall be punished according to the law particularly applicable to the cases of persons so related; and those accessories who are not related at all, shall be punished as similar offenders would be in ordinary cases." (Sec. 284.)

An adulterer and his paramour, caught in the act, may be immediately killed by the husband, but not afterward.

"All persons rearing venomous animals, or preparing drugs of a poisonous nature, for the purpose of applying the same to the destruc-

tion of men, or instructing others so to do, shall be beheaded, although no person is actually killed by means of such drugs or animals. The property of the person guilty of this crime, shall be forfeited to government, and his wives and children, as well as the other inmates of his house, although innocent of the crime, shall be perpetually banished to the distance of 2000 *lee*." (Sec. 289.)

Killing by accident or mistake is punished less severely according to circumstances.

"If a wife strikes and abuses her husband's father or mother, grandfather, or grandmother, and the husband, instead of accusing her before a magistrate, kills her in consequence of such offense, he shall be punished with 100 blows."

"If a wife, having been struck and abused by her husband, in consequence thereof kills herself, the husband shall not be responsible. When a wife, after her husband's father and mother, grandfather and grandmother are dead, is guilty of disrespect to their memory only, or is charged with some other fault not worthy of death according to the laws, if thereupon the husband kills her, he shall suffer the punishment of death, by being strangled, after the usual period of confinement." (Sec. 293.)

"Whoever is guilty of killing his son, his grandson, or his slave, and attributing the crime to another person, shall be punished with 70 blows, and one and one half year's banishment."

"Any person attributing, previous to burial, the death of his father, mother, grandfather or grandmother; and any slave in like manner, attributing the death of his master to a person innocent thereof, shall, if aware of the falsehood of the imputation be punished with 100 blows, and three years banishment." (Sec. 294.)

"When unskilful practitioners of medicine or surgery, administer drugs, or perform operations with the puncturing needle, contrary to the established rules and practice, and thereby kill the patient, the magistrates shall call in other practitioners to examine the nature of the medicine, or of the wound, as the case may be, which proved mortal; and if it shall appear upon the whole to have been simply an error, without any design to injure the patient, the practitioner of medicine shall be allowed to redeem himself from the punishment of homicide, as in cases purely accidental, but shall be obliged to quit his profession forever." (Sec. 297.)

"If it shall appear that a medical practitioner intentionally deviates from the established rules and practice, and while pretending to remove the disease of his patient, aggravates the complaint, in order to extort more money for its cure, the money so extorted shall be considered to have been stolen, and punishment inflicted accordingly, in proportion to the amount."

"If the patient dies, the medical practitioner who is convicted of designedly employing improper medicines, or otherwise contriving to injure his patient, shall suffer death by being beheaded, after the usual period of confinement."

Section 302 contains minute provisions for the punishment of assaults of many kinds, the number of blows to be inflicted depending on the nature of the injury or indignity offered. Quarreling, fighting and wounding another within the Imperial Palace is punished more severely than elsewhere. Striking or wounding a person of the Imperial blood is also an aggravated offense but not punishable capitally unless the injury amounts to incurable infirmity. Assaulting an officer of the government is also an aggravated offense but not made a capital crime. Apprentices striking their masters are liable to two degrees heavier punishment. A slave striking a free person is punished one degree more severely, and a free person striking a slave one degree less severely, but killing a slave is a capital offense. A slave designedly striking his master is punishable with death. If the master intentionally kills his slave he is liable to 60 blows and one year's banishment, and if he designedly kills a hired servant he shall be strangled.

"Any person who is guilty of striking his father, mother, paternal grandfather or grandmother; and any wife who is guilty of striking her husband's father, mother, paternal grandfather or grandmother, shall suffer death by being beheaded. Any person who is guilty of killing such a near relation, shall suffer death by a slow and painful execution.

"Any person who kills so near a relation, purely by accident, shall still be punished with 100 blows and perpetual banishment to the distance of 3000 *lee*. In the case of wounding purely by accident, the person convicted thereof, shall be punished with 100 blows and three years banishment; in these cases, moreover, the parties shall not be permitted to redeem themselves from punishment by the payment of a fine, as usual in the ordinary cases of accident."

"If a father, mother, paternal grandfather or grandmother, chastises a disobedient child or grandchild in a severe and uncustomary manner, so that he or she dies, the party so offending shall be punished with 100 blows. When any of the aforesaid relations are guilty of killing such disobedient child or grandchild designedly, the punishment shall be extended to 60 blows and one year's banishment." (Sec. 319.)

"Whoever, upon perceiving a father, mother, paternal grandfather or grandmother, to be struck by any person, immediately interposes in defense of such near relation, and strikes the aggressor, shall, unless striking such a blow as to produce a cutting wound, be entirely justified and free from responsibility; and even if the wound inflicted by the individual who interposes under such circumstances is severe, he shall be punished less severely by three degrees than in ordinary cases; ex-

cepting only those instances in which the blows struck prove mortal, when the punishment shall be the same as in ordinary cases. To entitle however, any person to the benefit of this law, it must always be strictly proved that the blows were inflicted on the impulse of the moment, and actually in defense of such aforesaid relation." (Sec. 323.)

"In ordinary cases, all persons guilty of employing abusive language shall be liable to a punishment of 10 blows; and persons abusing each other, shall be punishable with 10 blows respectively." (Sec. 324.)

Abusive language to officers is punished more severely,

"All the subjects of the empire, whether soldiers or citizens, who have complaints and informations to lay before the officers of government, shall address themselves in the first instance, to the lowest tribunal of justice within the district to which they belong, from which the cognizance of the affair may be transferred to the superior tribunals in regular gradation. Any individual who instead of addressing himself to the proper magistrate within his district, proceeds at once to lay his complaint and information before a superior tribunal, shall be punished with 50 blows, although his complaint should be just, and his information correct."

"It is however lawful to appeal to a superior magistrate, when the inferior officer of justice refuses to receive the information and complaint, or decides thereon unjustly; but not otherwise."

"Whoever, in order to present an information, detains an officer of justice in his public progress and whoever, for the same purpose, summons any officer of justice to his tribunal by beat of drum, shall be punished with 100 blows; if his information be false and complaint groundless; and if he should be likewise guilty of the crime of a false and malicious accusation against any person, he shall be punished as much more severely as the law applicable to such cases of criminality may authorize."

"Nevertheless, if his cause is found to be a just one, the irregularity of his proceedings shall be pardoned." (Sec. 332.)

"Any person who addresses and presents an information and complaint to an officer of government, containing direct criminal charges against a particular individual, without having inserted therein his (the informant's) proper name and family name, shall, although the charges should prove true, be punished with death, by being strangled at the usual period." (Sec. 333.)

"When an information concerning a charge of high treason or rebellion is regularly presented to an officer of government, if he does not immediately receive and act thereon, that is to say, take measures for seizing culprits, and preventing the progress of such disorders, he shall be liable to a punishment of 100 blows and three years banishment, although no evil consequences should ensue from his neglect; but if through his inattention, considerable numbers are suffered to assemble

tumultuously, attacking forfeited stations, ravaging the country, and distressing the inhabitants, such officer of government shall suffer death, by being beheaded at the usual period." (Sec. 334.)

"Whenever any information is laid before a magistrate, who is related by blood or by marriage to the accuser or to the accused, who was educated by, or had ever served under either party, or who, lastly, had been habitually the enemy or public adversary of either; in all such cases the magistrate must decline to act thereon, and shall therefore transfer it forthwith to another jurisdiction."

"Any magistrate who takes cognizance of a case under such circumstances, shall be liable to a punishment of 40 blows; although he should have pronounced a just and impartial sentence:—otherwise, he will be liable to the severe punishment attending an intentional deviation from justice." (Sec. 335.)

"Whoever lays before a magistrate a false and malicious information, in which some person is expressly charged with a crime punishable with any number of blows, not exceeding 50, shall suffer a punishment two degrees more severe than that which the accused would have merited had the accusation been true. If the crime falsely alleged was punishable with more than 50 blows, or with temporary or perpetual banishment the punishment of the accuser shall be three degrees more severe than that to which the accused is rendered liable; but shall not, in these, or in any of the preceding cases, be so increased as to become capital." (Sec. 336.)

This is a long section with many modifying clauses and seems to indicate that malicious prosecutions are very numerous.

"In all cases of exciting and disposing others to inform and prosecute, the person who draws up the information for the prosecutor, and by any aggravation or extenuation deviates from the truth, shall be liable to the same punishment as the false accuser; except in a capital case, when his punishment shall be reduced one degree. In the case of hiring any person to present and prosecute a false accusation, the person hired shall be liable to the same punishment as the false accuser, under the same mitigation in capital cases, as in the preceding instances." (Sec. 340.)

"All civil and military officers, and also all persons who have employments without rank under government, shall, when convicted of accepting a bribe for a lawful or for an unlawful purpose, be punished in proportion to the amount thereof, as stated in the subjoined table; and moreover be deprived of their rank and offices, if having any; and if not, of their actual employments whatever they may be. Those who are not in the receipt of any salary, or of a salary not amounting to one stone of rice per month in value, shall be punished less severely, in every case, by one degree." (Sec. 344.)

There are many sections relating to bribery of and extortion by public

officers against which punishments are denounced. Forgeries and frauds of many kinds are defined and their punishments declared, ranging all the way from minor punishment with the bamboo to beheading for forging an imperial edict.

"Criminal intercourse by mutual consent with an unmarried woman, shall be punished with 70 blows; if with a married woman, the punishment shall be 80 blows."

"Deliberate intrigue with a married or unmarried woman shall be punished with 100 blows."

"Violation of a married or unmarried woman; that is to say, a rape, shall be punished with death by strangulation."

"An assault with an intent to commit a rape, shall be punished with 100 blows, and perpetual banishment to the distance of 3000 lee. In these cases, however, the conviction of the offender must be founded on decisive evidence of force having really been employed."

"Criminal intercourse with a female under twelve years of age, shall be punished as a rape in all cases." (Sec. 346.)

"Civil or military officers of government, and the sons of those who possess hereditary rank, when found guilty of frequenting the company of prostitutes and actresses, shall be punished with 60 blows."

"All persons who are guilty of negotiating such criminal meetings and intercourse, shall suffer the punishment next in degree." (Sec. 374.)

"In all civil and military jurisdictions, where there are private soldiers attached to the government stations, or laborers employed in the public works; whenever such persons are suffering under any disease or infirmity, the officer in command shall duly communicate the circumstance to the officer whose province it is to furnish medicines and medical aid to the sick; if he fails to make such communication, or in the event of such communication having been made, if the proper officer does not provide sufficient medical assistance, the individual neglecting his duty shall be liable to the punishment of 40 blows; and this punishment shall be increased to 80 blows, whenever the sick person dies in consequence of such neglect." (Sec. 377.)

"All the accessaries, as well as principals, to the crime of wilfully and maliciously setting on fire any residence, either of an officer of government, or of any private individual, their own only excepted, or to the crime of, in the same manner setting fire to any government or private building, treasury, or store-house, in which public or private property of any kind is stored and deposited, shall be punished with death, by being beheaded at the usual period." (Sec. 383.)

"All persons who, after having entered into the service of government as constables, bailiffs, thief-takers, or in any capacity of that description, at any time allege pretexts of excusing themselves from the duty of pursuing and seizing offenders; or do not actually pursue and seize

those offenders, with the place of whose retreat they are acquainted, shall in each case, be liable to the punishment next in degree to that which is due to the offender, or to the most guilty of the offenders, if there should be more than one, whom their neglect had occasioned to remain at large." (Sec. 387.)

Many penalties are denounced against officials for neglect or misconduct with reference to the arrest, detention and punishment of offenders.

"Whenever the individuals committed to prison, have no families or relations by whom they may be supplied with necessities, the superior authorities shall be addressed for leave to supply them with clothes and provisions, and, whenever they are sick, with medicines and medical assistance; leave shall also be asked in favor of those who are not charged with capital crimes, that they may, when sick, be released from their fetters and handcuffs; and in favor of those who are only liable to a punishment of 50 blows or less, that they may when sick be let out of prison, upon sufficient security being given for their return; and lastly, in favor of those who are dangerously sick or incurably infirm, that their families may have free access to them." (Sec. 401.)

"It shall not, in any tribunal of government, be permitted to put the question by torture to those who belong to any of the eight privileged classes, in consideration of the respect due to their character; to those who have attained their seventieth year, in consideration of their advanced age; to those who have not exceeded their fifteenth year, out of indulgence to their tender youth and lastly, to those who labour under any permanent disease or infirmity, out of commiseration for their situation and sufferings. In all such cases, the offenses of the parties accused shall be determined on the evidence of facts and witnesses alone; and all officers of government who disregard the restrictions of this law, shall be punished either according to the law against a designed, or the law against a careless aggravation of the punishment of an offender, according as the said misconduct on the part of the magistrate is attributable to design, or to inattention."

"Moreover, in all cases in which the circumstances or connexion between the parties produce a legal incapacity, or in the case of individuals arrived at eighty, or under ten years of age, or entirely and permanently infirm, it shall not be permitted even to require or to receive their testimony; every breach of this law in any tribunal of government, shall be punished accordingly with 50 blows, and the clerk of the court esteemed, as in all other cases of misconduct in a joint and official capacity, the principal offender." (Sec. 404.)

A very curious table is contained in Section CCCCIX giving the punishments to be inflicted on the clerk of the court, the deputy or executive officer, the assessors and the presiding magistrate for wrong judgments, divided into classes, the first where a wrong judgment

is made by design and the second through error of judgment. The clerk of the court is punished most severely and the presiding magistrate least.

"Female offenders shall not be committed to prison except in capital cases, or cases of adultery."

"In all other cases, they shall, if married, remain in the charge and custody of their husbands, and if single, in that of their relations, or next neighbours, who shall, upon every such occasion, be held responsible for their appearance at the tribunal of justice, when required."

"All magistrates committing women to prison contrary to the provisions of this law, shall suffer the punishment of 40 blows."

"If any female who is condemned to corporal punishment, or to the question by torture, is discovered to be with child, she shall be sent back to the custody of the responsible persons aforesaid, and not be subjected to punishment or to the question by torture, until 100 days complete are elapsed from the period of her delivery." (Sec. 420.)

"All magistrates who authorize the execution of any capitally convicted offender, without waiting for the Imperial rescript, containing the ratification of the sentence grounded upon their final report of the case, shall be punished, at the least, with 80 blows."

"After the warrant of execution is received, a further delay shall be allowed, of three days, during which if the criminal is executed, or after which, if he is not immediately executed, the responsible officer of government shall be liable to the punishment of 60 blows. Nevertheless, in the case of robbers, and those who are sentenced to be executed for any of the ten treasonable offenses, a breach of this law shall only be punished with 40 blows." (Sec. 421.)

"If after a sentence is pronounced against an offender in a tribunal of justice, he is permitted to redeem himself from banishment or corporal punishment, in a case that is not by law redeemable; or if he is banished or corporally punished, in a case that is redeemable, the punishment of such false construction of the laws, shall be only one degree less severe than that of an entirely unjust and groundless sentence, under similar circumstances."

"If an offender who, conformably to the laws, ought to be strangled, is beheaded; or beheaded, when he ought to have been strangled; such deviation, if wilful, shall be punished with 60 blows; if committed by mistake, with 30 blows." (Sec. 422.)

"A determinate quantity of silks and stuffs, and of military weapons, shall be annually manufactured and prepared for the public service, in each subdivision of the department of public works; and if any of the workmen fail to provide in due season their assigned proportion, they shall be liable, at the least, to a punishment of 20 blows; and the punishment shall be increased as far as 50 blows, at the rate of

one degree for every additional tenth deficient: the punishment of the superintending officer of the work, shall be one degree less severe, and that of the officer superintending the supplies, two degrees less severe, than that of the workman."

"On the other hand, if the raw materials are not delivered to the workmen in sufficient quantities, and at proper times, the superintending officer of the manufactory shall suffer a punishment of 40 blows, and the superintendent of supplies a punishment of 30 blows; the workmen shall, in such cases, be excused." (Sec. 430.)

"When any of the government residences, granaries, treasuries, manufactories, or other buildings, are in a defective or ruinous condition, the officer having charge thereof, shall immediately report the same to his superior, and state the nature of the repairs that are required; and he shall be liable to a punishment of 40 blows, whenever he neglects to do so: if, in consequence of such neglect, any public property should happen to be injured or destroyed, he shall, besides the aforesaid punishment to which he is liable, be obliged to make good the same to government."

"On the other hand, if, a regular notice having been given to the superior officer, the latter neglects to authorize the necessary repairs, he alone will be liable, both to the punishment, and to the obligation of making good the amount of the contingent damages." (Sec. 431.)

"If any of the governors of cities of the first, second, or third order, or of any other provincial sub-divisions, instead of inhabiting the public buildings expressly allotted to their use, hire, and reside in private houses belonging to the inhabitants of the districts under their authority, they shall, for every such offense, be punishable with 80 blows." (Sec. 432.)

"When the embankments of great rivers are not duly repaired and maintained, or repaired unseasonably, the superintending officer in that department shall be punished with 50 blows; if any lands, goods, or other articles of property of any kind, are damaged by an inundation in consequence of such neglect and misconduct, the punishment shall be increased to 60 blows; and if any persons are killed or injured, to 80 blows. In the case of private embankments, the responsible persons neglecting to repair them at the proper seasons, shall be liable to a punishment of 30 blows; and if any damage ensues, in consequence of such neglect, to a punishment of 50 blows."

"Nevertheless, in respect to those sudden and impetuous inundations, which are produced by heavy rains, or other similar causes, and which sometimes wash away, and break down irresistibly, all ordinary embankments; as it is not in the power of man always to foresee and guard against such accidents, the parties usually held responsible, shall not be liable in such cases to any punishment." (Sec. 434.)

"Any person who encroaches upon the space allotted to public streets,

squares, high-ways, or passages of any kind; that is to say, who appropriates a part of any such space to his own use, by cultivating it, or building on it, shall be punished with 60 blows, and obliged to level and restore the ground to its original state."

"Any person who opens a passage through the wall of his house, to carry off filth or ordure into the streets or high-ways, shall be punished with 40 blows; but in the case of a passage being opened to carry off water only, no penalty or punishment shall be inflicted." (Sec. 435.)

"The repair of all bridges, whether permanent or formed for temporary use, of boats only; and also of all roads and high-ways, shall come under the cognizance and jurisdiction of the governors of the cities of the different orders, their assessors, and deputies; and there shall be a special examination of the same, during the interval between the harvests of each year, in order to ascertain that the bridges are maintained in a firm and complete condition, and that the roads are solid and even: when the regular communication by any of the said established roads and bridges is interrupted, for want of due attention to the necessary repairs, the responsible magistrate shall suffer a punishment of 30 blows for his neglect; also in places of customary communication, where bridges ought to be built, or ferry-boats stationed for the accommodation of the inhabitants, a failure to do so in either case, shall be punished with 40 blows." (Sec. 436.)

THE CIVIL CODE OF FRANCE

The Code Napoleon, which with the amendments since made is now called the Civil Code of France, contains twenty-two hundred and eighty-one sections and is published in a single volume. The preliminary title provides that laws become enforceable from the moment the promulgation can have become known, that the law can have no retroactive effect, that laws of police and public order are binding on all who live in the territory, that all real estate is governed by French law, and laws relating to the status of French people apply to those residing in foreign countries.

4. "A judge who refuses to render judgment under pretence that the law is silent, obscure or insufficient, may be prosecuted as being guilty of denying justice."

5. "Judges are not allowed to decide cases submitted to them by way of general and settled decisions."

6. "Laws relating to public order and morals cannot be derogated from by private agreement."

Book I is "Of Persons," the first title is "Of the Enjoyment and Loss of Civil Rights." It furnishes rules for determining who are French and who are aliens and how civil rights may be acquired and lost. The second title is "Of Certificates of Civil Status." All births must

be reported to the officer of civil status by a certificate in due form showing day and hour of birth, sex, name and names of parents and this certificate must be duly recorded. "Before the celebration of a marriage the officer of civil status shall make two publications on Sunday at an interval of eight days in front of the door of the city hall." The marriage must be celebrated within a year or a new publication must be made. "The marriage shall not be celebrated before the third day after and exclusive of the day of the second publication." Instruments of opposition may be served and be entered on the register, and the marriage cannot be celebrated until the opposition is withdrawn or adjudged insufficient.

75. "Upon the day designated by the parties, after the time for the publications, the officer of civil status shall read to the parties in the city hall, in the presence of four witnesses, related, or not, the papers above mentioned relating to the civil status of the parties and to the formalities of marriage, and he shall also read Chapter VI. of the respective rights and duties of husband and wife of the title of marriage."

"He shall ask the future husband and wife and the persons authorizing the marriage, if they are present, to declare whether a marriage contract has been made, and in case of the affirmative, the date of this contract and also the name and residence of the notary who made it.

"He shall receive from each party, one after the other, the declaration that they wish to take each other as husband and wife; he shall declare in the name of the law that they are united by marriage and he shall immediately draw up a certificate to that effect."

"No burial shall take place without a permit of the officer of civil status." Certificates of death are required to be made and the formalities connected with them are given in detail. Provision is also made for certificates of civil status of soldiers and sailors. Corrections of certificates of civil status may be applied for and granted by the Tribunal of the place where the certificate has been drawn up.

The interested parties shall be summoned if necessary.

After this follow Titles Third. "Of Domicil" and Fourth "Of Absentees." Where a person has been absent from his domicil five years his absence may be adjudged and his presumptive heirs or legatees put in provisional possession of his property, but if the absentee left a power of attorney his absence cannot be established till after ten years.

125. "Provisional possession is only a deposit, which secures to those who obtain it the administration of the property of the absentee and which makes them accountable to him if he appears or if he is heard from."

After thirty years absence or one hundred years from the birth of the absentee the property may be finally divided among the heirs or devisees. If the absentee returns or his existence is established the proceeding is avoided.

Title Fifth is "Of Marriage," and is divided into eight chapters.

Males must be eighteen and females fifteen to contract a marriage, but the President of the Republic may grant dispensations for serious causes. A son under twenty-five and a daughter under twenty-one must have the consent of father and mother or the father alone in case of disagreement. Many formalities are required. Marriages may be annulled by action brought by a party or a parent, whose consent was required but not given, if brought within the periods limited.

203. "The husband and wife, by the sole fact of the marriage, assume together the obligations of supporting, maintaining and educating their children."

"Children owe support to their father, mother and other ascendants who are in want."

206. "Sons-in-law and daughters-in-law owe likewise under the same circumstances support to their father-in-law and mother-in-law, but this obligation ceases:

1. When the mother-in-law has contracted a second marriage;

2. When the husband and wife owing to whom the affinity existed and the children born of his or her marriage with such wife or husband are dead."

212. "Husband and wife owe each other fidelity, support, and assistance."

213. "A husband owes protection to his wife; a wife obedience to her husband."

214. "A wife is bound to live with her husband and to follow him wherever he deems proper to reside. The husband is bound to receive her, and to supply her with whatever is necessary for the wants of life, according to his means and condition."

215. "A wife cannot sue in court without the consent of her husband, even if she is a public tradeswoman, or if there is no community, or she is separated as to property."

217. "A wife, even when there is no community, or when she is separated as to property, cannot give, convey, mortgage, or acquire property, with or without consideration, without the husband joining in the instrument or giving his written consent."

If the husband refuse to allow his wife to sue or execute an instrument, the Tribunal of First Instance may grant her leave. A married tradeswoman may bind herself by her contracts in her business without the consent of her husband.

227. "Marriages are dissolved:

1. By the death of the husband or wife;

2. By a divorce lawfully decreed;

3. By a final sentence against the husband or wife to a punishment occasioning civil death." (Civil death was abolished in 1854.)

228. "A wife cannot contract a second marriage until ten months have elapsed since the dissolution of the previous marriage."

Title Sixth is "Of Divorce."

Adultery, violence, cruelty, gross insults and a sentence to degrading corporal punishment are grounds of divorce. By the Code Napoleon the wife can sue the husband for a divorce on the ground of adultery only when he brought his concubine into their common residence. This clause was stricken out by amendment in 1884, and the same rules now apply to both husband and wife. Divorces may be either absolute or from bed and board. The court has power to make provision for temporary care of property and support and the care of the children. Publication of the proceedings by the press is prohibited under penalty. Appeals from judgments of divorce may be taken to the Court of Cassation and such an appeal stays execution.

Alimony may be granted to either party, not exceeding one-third the income of the other. The court determines as to the custody of the children.

Title Seventh is "Of Paternity and Filiation." It gives rules for determining the legitimacy of children and for the acknowledgement of natural children. Title Eighth is "of adoption and officious guardianship."

343. "Persons of either sex can only adopt when they are over fifty years of age; when, at the time of the adoption, they have no children nor legitimate descendants, and when they are at least fifteen years older than the individuals whom they propose to adopt."

Adoption cannot take place before the adopted is of full age, nor till after the Tribunal of First Instance of the District in which the adopter resides has determined that there is occasion for it.

361. "Every individual over fifty years of age, without children or legitimate descendants, who wishes, during the minority of a person to attach that person to himself in a legal way, may become his officious guardian by obtaining the consent of the father and mother of the child, or of the survivor of them, or in default thereof the consent of the family council, or finally, if the child has no parents who are known, the consent of the administrators of the asylum where he has been received or the municipality of the place of his residence."

362. "A married person cannot become an officious guardian without the consent of the husband or wife."

364. "Such guardianship shall only be allowed in favor of children of less than sixteen years of age.

It carries with it, without prejudice to any special stipulations, the obligation to support the ward, to bring him up, and to place him in a condition to earn a living."

Title Ninth is "Of Paternal Authority."

376. "If the child has not yet commenced his sixteenth year, the father can have him incarcerated during a period of time not exceeding one month: for that purpose the Presiding Justice of the Tribunal of the District must at his request issue an order of arrest."

377. "From the beginning of the child's sixteenth year, until his majority or emancipation, the father can only ask that the child be incarcerated for six months at the utmost: he shall apply to the Presiding Justice of said Tribunal, who, after having conferred with the King's Attorney (Republic's Attorney), shall issue an order of arrest or refuse it, and may in the former case reduce the time of the incarceration asked for by the father."

378. "In either case there shall be no writing and no judicial proceedings with the exception of the order of arrest itself, in which the reasons shall not be stated.

"The father shall only be bound to sign an undertaking to pay all the expenses and to furnish proper support."

Title Tenth is "Of Minority, of Guardianship, and of Emancipation."

The period of minority extends to the age of twenty-one years. A father is administrator of the property of his minor children, and in case of his death the mother is entitled to the guardianship.

391. "The father, nevertheless, may appoint a special counsel to the surviving mother who is guardian, without whose advice she cannot take any steps in connection with the guardianship.

"If the father specifies the purposes for which the counsel is appointed, the guardian shall be able to act in all other matters without his assistance."

In case the mother remarries, her husband becomes joint guardian with her. If father and mother be dead the grandparents are entitled to the guardianship.

405. "When a child who is a minor and not emancipated shall be without father or mother or guardian appointed by his father or mother or male ascendants, and also when the guardian of one of the classes above mentioned shall fall under one of the causes of exclusion hereafter referred to, or shall have been duly excused, the appointment of the guardian shall be made by the family council."

407. "A family council shall be composed, not counting the Justice of the Peace, of six blood relatives, or relatives by marriage, chosen as well in the country where the guardianship takes rise as within a distance of two myria-meters, and one-half of such relatives shall be on the paternal side and one-half on the maternal side, following the order of proximity in each line.

A blood relative shall be referred to a relative by marriage of the same degree; and among relatives of the same degree the older shall be preferred to the younger."

409. "When the blood relatives or relatives by marriage in one or the other line shall not be sufficiently numerous on the spot or within the distance designated by article 407, the Justice of the Peace shall call the blood relative or relatives by marriage domiciled at a greater distance,

or citizens of the country known to have had continuous relations of friendship with the minor's father or mother."

410. "The Justice of the Peace may, even if there is a sufficient number of blood relatives or relatives by marriage on the spot, allow citations to be issued to blood relatives or relatives by marriage who are of a nearer degree or of the same degree as the blood relatives or relatives by marriage present, whatever may be the distance at which they are domiciled. This, however, shall be done in such a way as to omit some of the latter, and so that the number mentioned in the foregoing articles shall not be exceeded."

412. "The blood relatives, relatives by marriage, or friends so called, shall be bound to appear in person or to be presented by a special attorney. An attorney-in-fact cannot represent more than one person."

416. "The family council shall be presided over by the Justice of the Peace, who has a deliberative vote or a casting vote in case of division,"

420. "In every case of guardianship there shall be an assistant guardian appointed by the family council.

"His duties shall be to protect the interests of the minor when they conflict with those of the guardian."

There are many provisions relating to exemption from service as guardians and incapacity to act as such. The family council determines the amount to be allowed as yearly expenses of the minor and of the administration, and a sale or mortgage of real estate must be authorized by the family council and approved by the Tribunal of First Instance. The family exercises a general supervision over the guardian and the guardian must furnish the assistant guardian statements of his accounts when called for by the council.

476. "A minor is emancipated by right by his marriage."

477. "A minor, even unmarried, can be emancipated by his father, or in default of his father, by his mother, when he has reached the full age of fifteen years.

"Such emancipation takes place upon the sole declaration of the father or mother, received by the Justice of the Peace attended by his clerk."

A minor who has no father or mother may be emancipated at eighteen by the family council.

489. "A person of full age who is in a usual state of imbecility, insanity or madness, shall be interdicted, even if such condition is accompanied by lucid moments."

Application for interdiction is made to the Tribunal of First Instance.

494. "The Tribunal shall order the family council, composed in the manner specified in section 4 of chapter II. of the Title of Minority, of Guardianship and of Emancipation, to give its opinion on the condition of the person whose interdiction is sought for."

After receiving this opinion the Tribunal examines the defendant and

decides the case. If the interdiction is allowed a guardian and an assistant guardian are appointed in the same manner as in the case of guardians of minors, and the interdicted person is assimilated to a minor as to his person and property. Spendthrifts may be prohibited from disposing of their property without the assistance of counsel appointed by the Tribunal.

Book 2 treats "Of Property and of Different kinds of Ownership."

Real estate includes lands, buildings, crops till cut or gathered and structures for use on the land.

524. "The things which an owner of a piece of property has placed thereupon for the use or cultivation of such property are real estate by destination.

"Thus, the following things are real estate by destination, when they have been placed by the owner for the use and cultivation of the property:

Cattle used for farming purposes;

Farming implements;

Seeds given to farmers or settlers paying rent in kind;

Pigeons belonging to the pigeon house;

Warren rabbits;

Beehives;

Fish in the ponds;

Wine presses, boilers, stills, vintage tubs and barrels;

The necessary implements for working ironworks, paper-mills and other factories;

Straw and manure.

"All personal articles which the owner has placed upon the property to remain there perpetually are also real estate by destination."

528. "Bodies which can move from one place to another, whether they move themselves, such as animals, or whether they cannot move without the assistance of extraneous power, such as inanimate things, are personal property of nature."

Bonds, annuities and shares in financial, commercial and manufacturing companies are personal property even though the company owns lands. "Private individuals have the free disposal of what belongs to them subject to the restrictions established by law."

The Second title of Book 2 is "Of Ownership," and defines the rights of owners to what the thing produces and of a land owner to accretion from alluvion. What is added imperceptibly belongs to the riparian owner, and he loses what is imperceptibly washed away; but where a considerable portion of a field, which can be identified, is moved across or down a stream, the owner may claim or hold it within one year. If a stream navigable for boats or rafts opens a new bed, abandoning the old, the owners of the land occupied by the new bed take the old way of compensation.

"When the right of accession applies to two movable things belonging to two different owners, it is entirely governed by the principles of natural equity." The rules given as examples generally give the thing constructed from materials of two owners, or materials of one and labor of another, to the one contributing the principal value with compensation to the other for what he has furnished.

Title Third is "Of Usufruct, of Use and Habitation."

582. "A usufructuary has the right to the enjoyment of all kinds of fruits, whether natural, cultivated, or civil, which the thing of which he has the usufruct can produce."

583. "Natural fruits are those which result from the spontaneous production of the earth. The increase and young of cattle are also natural fruits."

"Cultivated fruits of land are those obtained by cultivation."

584. "Civil fruits are the rents of houses, the interest on sums due, and payments of annuities."

"The prices of leases on shares are also included in the class of civil fruits."

585. "Natural and cultivated fruits hanging from branches or standing upon roots when the usufruct begins, belong to the usufructuary."

"Those which are in the same state when the usufruct comes to an end belong likewise to the owner, without compensation from either side for ploughing and sowing, but also without prejudice to the portion of fruits which might belong to the settler paying in kind, if there was such a settler at the beginning or at the termination of the usufruct."

586. "Civil fruits are supposed to be gained day by day and belong to the usufructuary in proportion to the duration of his usufruct. This rule applies to the prices of leases on shares as well as to rents of houses and other civil fruits."

587. "If a usufruct includes things which cannot be used without being consumed, such as money, grain, liquors, the usufructuary has the right to use them, but on condition of returning others in like quantity, quality and value, or their estimation at the end of the usufruct."

A usufructuary may lease or assign his right to another. He may continue to work mines already opened but not open new ones. The usufructuary is bound to make ordinary repairs but not to rebuild or reconstruct. Heavy repairs are to be made by the owner. The right of the usufruct is forfeited by committing waste or allowing the property to deteriorate for want of repairs.

625. "The right of use and habitation are acquired and lost in the same manner as usufruct."

634. "The right of habitation cannot be assigned or let."

Title Four is "Of Servitudes or Land Burdens." There are sixty-four sections under this title dealing with the use of streams and

springs of water, party walls, ditches and hedges, the repair of buildings where various floors belong to different owners, windows and rights of way. This title is remarkably full and clear in its provisions with reference to party walls and other works near or upon the boundaries of land and is designed to facilitate the erection of buildings by the owners of adjacent lots on the boundary with equal burdens to each owner.

Book 3 is "Of the Different Ways of Acquiring Property." Title First is "Of Successions" and deals at length with the inheritance of property.

745. "Children of their descendants inherit from their father and mother, grandfathers and grandmothers, and other ascendants, without distinction of sex nor of primo-geniture, and even if they are born of different marriages.

"They inherit in equal shares and "per capita" when they are all of the first degree and inherit in their own right; they inherit "per stirpes" when all or part of them take by representation."

746. "If a decedent has left no issue, or brothers or sisters or descendants of them, the succession is divided in halves between the ascendants of the paternal line and the ascendants of the maternal line.

"The ascendant who is of the nearest degree takes the half allotted to his line to the exclusion of all others.

"The ascendants of the same degree inherit "per capita."

750. "In case of the previous decease of the father and mother of a person who has died without issue, his brothers and sisters or their descendants are called to the succession to the exclusion of the ascendants or other collateral relatives.

"They inherit either in their own right or by representation, as is provided in section 2 of the present chapter."

751. "If the father and mother of the person who has died without issue have survived him, his brothers and sisters or their representatives are only entitled to one-half of the succession. If only the father or mother survives, they are entitled to take three-quarters."

752. "The division of the half or of the three-quarters belonging to the brothers and sisters, according to the provisions of the previous article, is made between them in equal portions if they are all of the same marriage; if they are of different marriages the division is made by halves between the two paternal and maternal lines of the decedent: those of full blood take in both lines and those of the mother's and those on the father's side each take in their line only; if there are brothers and sisters on one side only, they inherit the whole, to the exclusion of all relatives in the other line."

"Relatives beyond the twelfth degree do not inherit."

Natural children inherit from parents if lawfully acknowledged by them but not from relatives of their parents. In case there are legitimate

children the natural child takes only one third of the portion he would have had if legitimate.

767. "When the decedent leaves no relatives of a degree entitling them to inherit, and no natural children, the property of the succession belongs absolutely to the surviving husband or wife, not divorced and against whom no judgment of separation from bed and board has become final.

"The surviving husband or wife not divorced who does not inherit the full ownership and against whom no judgment of separation from bed and board has become final has upon the succession of the predeceased wife or husband a right of usufruct which is:

"Of one-quarter, if the decedent leaves one or several children born of the marriage;

"Of the smallest portion of a legitimate child, which portion shall not exceed one-quarter, if the decedent has children born of a previous marriage;

"Of one-half in all other cases, whatever may be the number and the kind of heirs;

"The calculation shall be made upon a total composed of all the property existing at the death of the decedent, to which shall be fictitiously added the property which he has disposed of, either by instrument *inter vivos* or by will, for the benefit of persons entitled to inherit, not exempt from collation.

"But the surviving husband or wife can only exercise his or her right against the property which the decedent has not disposed of by instrument *inter vivos* or by will without prejudice to the rights to the reserve and the rights of reversion.

"He or she shall cease to exercise this right if he or she has received from the decedent advantages, even made by preciput and above the share, of which the amount reaches the proportion of the rights which the present law grants to him or her, and if this amount is less, he or she can only claim the balance of his or her usufruct.

"Until the final division, the heirs can, by giving sufficient security, ask that the usufruct of the surviving husband or wife be changed into a corresponding annuity. If they disagree, the Tribunals may in their discretion order this change.

"In case of a new marriage the usufruct of the husband or wife ceases if there are descendants of the decedent."

768. "If there is no surviving husband or wife, the succession escheats to the State."

A succession can be accepted absolutely, or under benefit of inventory, or renounced by the heir. The effect of the benefit of inventory is to relieve the heir from liability for the debts of the succession beyond the value of the property inherited. Numerous sections relate to the

division of estates among heirs and the protection of the rights of creditors.

843. "Every heir, even a beneficiary heir, coming into a succession shall return to his co-heirs everything he has received from the decedent, directly or indirectly, by donation *inter vivos*: he cannot keep the donations nor claim the legacies left to him by the decedent unless these donations and legacies have been made to him expressly by preciput and above his share or with exemption from collation."

852. "The expense of support, maintenance, tuition, apprenticeship, the ordinary expenses of fitting out, those for weddings and usual gifts, shall not be collated."

Provision is made in detail for collation in particular cases by contribution or taking less of the estate.

870. "The co-heirs contribute among themselves to the payment of the debts and liabilities of the succession, each one proportionately to what he takes."

871. "A legatee under universal title contributes with the heirs *pro rata* to what he takes, but a special legatee is not liable for the debts and expenses, with the exception of the action upon a mortgage which may lie against the real estate devised."

When division of an estate is made, the title of each to the part assigned him is warranted by his co-heirs and in case of ejectment they must indemnify him in proportion to their shares of the whole estate. "Divisions of estates can be rescinded on account of violence or fraud."

Title Second is "Of Donations Inter Vivos and of Wills."

894. "A donation *inter vivos* is an act by which the donor divests himself at the time and irrevocably of the thing given in favor of the donee, who accepts it."

895. "A will is an instrument by which a testator disposes, for the time when he will be no longer living, of the whole or part of his property, and which he can revoke."

"Entails are prohibited.

"Every provision by which a donee, an heir appointed, or a legatee shall be required to keep property and to return it to a third party shall be void, even as against the donee, the heir appointed or the legatee.

"Nevertheless, property which is free and which forms part of the endowment of a hereditary title which the King has created in favour of a Prince or of the head of a family can be transmitted by way of inheritance, as is provided by the Imperial Act of the 13th March, 1806, and by the *senatus consultum* of the 14th August following."*

* (This change was repealed in 1849.)

Some exceptions are given however and this does not interfere with giving the usufruct to one and the title to another. Adults of sound mind may make donations or wills but,

905. "A married woman cannot make a donation *inter vivos* without the special assistance or consent of her husband, or without having been authorized by the Court in accordance with what is provided by articles 217 and 219 of the Title Of Marriage.

"She does not require the consent of her husband, nor the authorization of the Court, to dispose of property by will."

913. "Advantages resulting from donations *inter vivos* or from wills cannot exceed one-half of the property of the person who has made such disposition, if he leaves one legitimate child at his death; one-third if he leaves two children; one-fourth if he leaves three or a greater number."

Descendants of whatever degree are included as children and donation cannot exceed half if the donor leaves ascendants in both lines and three-fourths if he leaves them in one line.

916. "If there are no ascendants and descendants, advantages by donations *inter vivos* or by wills can exhaust all the property."

920. "Donations, either *inter vivos* or *mortis causa*, which exceed the portion of property which can be disposed of, shall be reduced to that portion when the succession becomes open."

931. "All instruments containing a donation *inter vivos* shall be executed before notaries in the ordinary form of contracts, and the original shall remain with them, or otherwise such instruments shall be void."

A donation is not operative until accepted by a formal instrument.

939. "When a donation is made of property which can be mortgaged, the transcription of the deeds containing the donation and the acceptance and notice of acceptance which might have taken place by a separate instrument, shall be made at the bureau of mortgages in the District where the property is situated."

953. "A donation *inter vivos* can only be revoked for non-execution of the conditions under which it was made, on account of ingratitude, or if children have been born to the person."

Revocations for ingratitude must be enforced by action and for the specified cause. The grounds of revocation are, seeking to take the life of the donor, cruelty toward him, the commission of a felony or serious wrong, or refusal to give the donor support.

967. "Every person can dispose of his property by will, either in the form of an appointment of an heir or of the making of a legacy or under any other denomination sufficient to express his wish."

969. "A will can be holographic, or can be made as a public instrument, or in the mystic form."

970. "A holographic will shall not be valid unless it is wholly written, dated, and signed, in the hand of the testator. It is not subject to any other formality."

971. "A will made in the public form shall be received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses."

972. "If a will is received by two notaries, it shall be dictated by the testator and shall be written out by one of the notaries as it is dictated.

If there is only one notary, it shall also be dictated by the testator and written out by such notary.

In both cases it shall be read over to the testator in the presence of the witnesses.

All of which shall be expressly mentioned."

976. "When a testator desires to make a mystic or secret will, he shall be obliged to sign the instrument, whether he has written it himself or whether he has caused it to be written out by another person. The paper containing his will, or the paper used as an envelope, if there is one, shall be closed and sealed. The testator shall present it thus closed and sealed to the notary and to six witnesses at least, or he shall have it closed and sealed in their presence; and he shall declare that the contents of this paper are his will, written and signed by him, or written out by another person and signed by him: the notary shall draw up a certificate of superscription which shall be written out on this paper, or on the sheet used as an envelope; such certificate shall be signed as well by the testator as by the notary, and also by the witnesses. All of which shall be done without interruption and without attending to other business; and in case the testator should not be able to sign the certificate of superscription, owing to a cause having arisen since the signing of the will, the declaration which he makes thereof shall be mentioned, and in such case it shall not be necessary to increase the number of witnesses."

Soldiers and sailors may execute wills before certain officers designated, and citizens on voyages at sea or in foreign parts may make them before witnesses in the forms pointed out. Very full provisions are made with reference to the distribution of legacies, the appointment of executors and the form and effect of marriage contracts.

1091. "Husband and wife may, by their marriage contract, make to each other, reciprocally or the one to the other, such donations as they may deem proper, subject to the rules hereafter expressed."

1094. "The husband or wife may, either by the marriage contract or could dispose of in favor of a stranger, and besides, of the usufruct of the whole portion of which the law does not allow the disposal to the detriment of heirs.

"And in case the husband or wife who is the donor leaves children or descendants, he or she may give to the other either a quarter in full ownership, and the usufruct of another quarter, or only the usufruct of one half of all his or her property."

The subject of succession, donations and wills covers eighty-three pages of the code or nearly one-sixth of the whole.

Title Third is "Of Contracts or Conventional Obligations in General." It covers one hundred and nine pages and is in main a clear statement

of the law of contracts generally recognized by all commercial people, though some of its provisions are peculiar. The first two chapters give definitions of various kinds of contracts and conditions essential to a valid contract.

1134. "Contracts lawfully entered into take the place of the law for those who have made them.

"They cannot be cancelled unless it is by mutual consent or for causes allowed by law.

"They must be performed in good faith."

1142. "Every obligation to do or not to do resolves itself in damages in case of non-performance on the part of the debtor."

1149. "The damages due to the creditor are generally for the loss which he has made or the profit which he has been deprived of, subject to the exceptions and restrictions hereinafter contained."

1152. "When the agreement provides that the party who fails to perform it shall pay a certain amount of damages, no larger or smaller amount can be awarded to the other party."

1153. "In the obligations which are limited to the payment of a certain sum, the damage resulting from delay in the performance shall only consist in a judgment for the interest allowed by law, subject to the special rules applying to commerce and to security.

"These damages are due without the creditor being obliged to show any loss.

"They are only due from the day of the demand, except in the cases in which the law makes them run as a matter of right."

1156. "The common intention of the contracting parties should be sought in contracts rather than taking the literal meaning of the words."

Various sorts of conditions are defined and the rights and liabilities of parties to joint and several, divisible and indivisible contracts are stated in accordance with principles of equity.

1235. "Every payment supposes a debt; what has been paid without being due is subject to be reclaimed.

"One is not allowed to reclaim payment in case of natural obligations which have been voluntarily paid."

1236. "An obligation can be paid by any person who has no interest therein, provided such party acts in the name of and for the purpose of releasing the debtor, or if he acts in his own name, provided he is not subrogated to the rights of the creditor."

1237. "The obligation to do a thing cannot be satisfied by a third party against the wish of the creditor, when the latter is interested in having it fulfilled by the debtor himself."

1249. "Subrogation to the rights of a creditor for the benefit of a third person who pays his is either conventional or legal."

"1250. "Such subrogation is conventional:

* "1. When the creditor receiving payment from a third person subrogates him to his rights, actions, privileges or mortgages against the debtor: such subrogation must be express and made at the same time as the payment;

"2. When the debtor borrows a sum for the purpose of paying his debt and of subrogating the lender to the rights of the creditor. In order that such a subrogation should be valid, it is necessary that the instrument by which the loan is made and the receipt thereof should be drawn up before notaries; that in the instrument for the loan it shall be declared that the sum has been borrowed to make the payment, and that in the receipt it shall be declared that the payment has been made with the moneys furnished for that purpose by the new creditor. Such subrogation takes place independently of the wish of the creditor."

1251. "Subrogation takes place by right:

"1. For the benefit of the person who, being himself a creditor pays another creditor, who is preferred to him on account of his privileges or mortgages;

"2. For the benefit of the purchaser of a piece of real estate who applies the price of his purchase to the payment of the creditors to whom this hereditament was mortgaged;

"3. For the benefit of the person who, being bound with others or for others to the payment of the debt, had an interest in satisfying it;

"4. For the benefit of the heir with benefit of inventory who has paid with his moneys the debts of the succession."

A debtor has the right to appropriate his payment to such debt as he means to discharge and may relieve himself from an obligation by a tender and "consignation," that is a deposit of the thing tendered and notice of the time and place of making the deposit.

1265. "An assignment of property is the abandonment made by a debtor of all his property in favour of his creditors when he finds himself unable to pay his debts."

1266. "A voluntary assignment of property is one which creditors accept voluntarily and which has no other effect than the one resulting from the very conditions of the contract entered into between them and the debtor."

1268. "A judicial assignment is an advantage which the law grants to a debtor who has been unfortunate and has acted in good faith; he is allowed to make in court to his creditors the abandonment of all his property, notwithstanding any stipulation to the contrary, for the purpose of securing the liberty of his person."

1270. "Creditors cannot refuse a judicial assignment outside of the cases excepted by law.

"The assignment carries with it the release of the execution against the person.

"Otherwise, it only releases the debtor to the extent of the value of the property abandoned; and in case such property is insufficient, if he

acquires more property he is obliged to abandon it until full payment has been made."

1271. "Novation takes place in three ways:

"1. When the debtor contracts towards his creditors a new debt which is substituted for the old one, and extinguishes it;

"2. When a new debtor is sustained for the old one, who is released by the creditor;

"3. When, owing to a new agreement, a new creditor is substituted for the old one, as to whom the debtor is released."

1282. "A voluntary surrender of an original instrument under private signature by a creditor to a debtor is proof of release."

Various rules of evidence of contracts and payments are stated. Written instruments are classified as public, made by a public officer, or private, made by the parties.

1326. "A note or a promise under private signature by which a single party binds himself to another to pay a sum of money or an appreciable thing, must be wholly written in the hand of the person who signs it, or at least, it is necessary that, besides his signature, he should have written in his own hand *Good for*, or *Approved*, with the sum or the quantity of the thing written out in full;

"Except in case the instrument emanates from traders, workmen, farm laborers, vine-dressers, laborers hired by the day, and servants."

1329. "The books of merchants shall not be taken as proof against persons who are not traders for the articles therein mentioned, with the exception of what is stated with respect to oaths."

1330. "The books of merchants shall be held as proof against themselves, but the person who wishes to derive an advantage from them cannot divide them as to the contents which may be in opposition to his claim."

1341. "It shall be necessary to execute an instrument drawn up in the presence of notaries or made under private signature for all things of which the sum or value exceeds one hundred and fifty francs, even in case of a voluntary deposit, and no proof of witnesses in favour or against the contents of the instrument, nor as to what is alleged to have been said previously, at the time, or since the making of the same, shall be allowed, even if the sum or value in dispute is less than one hundred and fifty francs:

"All of which is without prejudice to what is mentioned in the laws relating to commerce."

1357. "Judicial oaths are of two kinds:

"1. Those which one of the parties proffers to the other to make the judgment in the case depend upon them. They are called decisive oaths;

"2. Those which are proffered by the Judge of his own accord to either of the parties."

1358. "A decisive oath can be proffered in all kinds of controversies whatsoever."

1359. "It can only be proffered with respect to a fact which is personal to the party to whom it is proffered."

1360. "It can be proffered at all stages of the case, and even if there does not exist a commencement of proof of the claim, or of the exception in connection with which it is proffered."

1361. "A person to whom an oath is proffered and who refuses to take it, or who does not consent to have it taken by his opponent, or an opponent to whom it has been left to take the oath and who refuses to take it, shall be defeated in his claim or in his exception."

1366. "A Judge may proffer an oath to one of the parties, either to make the decision of the case result from it, or only to fix the amount of the judgment."

1367. "A Judge can only of his own accord proffer an oath, either upon the claim or upon the exception set up, under the two following conditions; it is necessary:

"1. That the claim of the exception should not be fully established:

"2. That it should not be wholly without proof.

"Outside of these two cases the Judge must either admit or reject the claim absolutely."

1371. "Quasi-contracts are the purely voluntary acts of an individual from which a certain agreement results in favour of a third party, and sometimes a reciprocal agreement between two parties."

1377. "When a person thought by mistake he owed a debt and has paid it, he has the right to claim it back from the creditor.

"Nevertheless, this right ceases in case the creditor has suppressed his written proof in consequence of the payment, subject to the remedy of the person who has paid against the real debtor."

1383. "Every one is responsible for the injury which he has caused not only owing to his own act, but owing to his negligence or his imprudence."

Father and mother are liable for injuries caused by their minor children; masters and employers for those by their servants, and schoolmasters and mechanics for those of their pupils and apprentices.

1385. "The owner of an animal, or the person who uses it while he has the use of it, is liable for the injuries which the animal has caused, whether the animal was under his care or whether it was lost or got loose."

1386. "The owner of a building is responsible for the injuries caused by its destruction when such destruction has taken place owing to his not keeping it in good order or owing to bad construction."

Title Fifth is "Of Marriage Contracts and the respective rights of husband and wife."

1387. "The law only regulates conjugal relations with respect to property when there is no special agreement, but the husband and wife may enter into any agreement they deem proper, provided it is not contrary to good morals, and besides, is subject to the following restrictions."

1388. "A husband and wife cannot derogate from the rights resulting from the husband's marital powers over the person of the wife and of the children or which belong to the husband as head of the family, nor from the rights conferred upon the survivor of the husband or wife under the Title Of Paternal Authority and the Title Of Minority, of Guardianship and of Emancipation, nor from the prohibitory provisions of the present code."

1389. "They cannot make any agreement or renunciation of which the object would be to change the legal order of succession, either with respect to themselves in the succession of their children or descendants or with respect to their children among themselves; without prejudice to the donations *inter vivos* or *mortis causa* which may be made according to the manner and in the cases provided for in the present Code."

They may in a general manner declare that they intend to marry under the system of community or under the dotal system. Community property includes all personal property of the parties owned at the time of the marriage and all real and personal property acquired afterward. It does not include the real property owned by either at the time of marriage. The community is liable for the debts of each existing at the time of the marriage, but such as are liens on the lands of one of them are chargeable against his or her share. Lands donated to or inherited by one during the marriage do not belong to the community, nor do those taken in exchange for the property of one of them. The community is liable for all personal debts of each existing at the time of the marriage, for all subsequently contracted by the husband or by the wife with his consent, and for all family expenses.

1421. "The husband has the sole management of community property.

"He can sell, convey, and mortgage it without the co-operation of his wife."

1422. "He cannot dispose *inter vivos* of the real estate belonging to the community, nor of the whole or part of the personal property, without consideration, unless it is for the establishment of children of the marriage.

"Nevertheless, he may dispose, without consideration and specifically, of the personal property in favour of all persons, provided he does not retain the usufruct for himself."

The husband also has the management of the individual property of the wife.

1441. "The community is dissolved:

1. By natural death;
2. By civil death;
3. By divorce;
4. By separation from bed and board;
5. By separation of property."

1453. "After the dissolution of the community the wife or her heirs

and legal representatives have the right to accept or renounce it: any agreement to the contrary is void."

1454. "A wife who has interfered with the property of the community cannot renounce the community.

"Acts of pure administration or preservation do not amount to an interference."

After the dissolution of the community husband and wife must each return to the community such property or sums as they owe by way of compensation for encumbrances discharged or to endow a child, and may take out individual property and the price of his or her real estate sold and used for the community. The surplus after payment of debts is then divided equally between husband and wife. A wife is only liable for the debts of the community to the extent of her share of the community property. The husband is liable for all debts contracted by him, but only for one half the personal debts of the wife.

1492. "The wife who renounces loses all her rights to the property of the community and even to the personal property which has become part of it through her.

"She only takes back the clothes and linen for her own use."

1493. "The wife who renounces has the right to take back:

"1. The real estate belonging to her when it exists in kind, or the real estate which has been purchased as a reinvestment;

"2. The proceeds of the real estate belonging to her which has been conveyed and for which a reinvestment has not been made and accepted as above stated;

"3. All the indemnities which may be due to her by the community."

The husband and wife may modify legal community by all sorts of agreements not forbidden by law. This includes the right to give the survivor the whole of the property or to assign to each or his or her heirs such unequal share as may be agreed on.

1536. "When the husband and wife have stipulated in their marriage contract that there would be a separation of property between them, the wife retains the entire management of her personal property and real estate and the free enjoyment of her income."

1537. "The husband and wife each contribute to the household expenses according to the conditions in their contract; and if there are none in relation thereto, the wife contributes to those expenses to the extent of one third of her income."

1538. "The wife cannot in any case, nor in consequence of any agreement, convey her real estate without the express consent of her husband, or in case of his refusal, without being authorized by the Court.

"Any general consent given to the wife to convey her real estate, either by marriage contract or since then, is void."

Chapter III is entitled "Of Dotal System."

1540. "Dowry under this system, as well as under the one provided by Chapter II, is the property which the wife brings to the husband to bear the household expenses."

1541. "Everything the wife sets apart, or which is given to her by marriage contract, is dotal unless there is an agreement to the contrary."

The husband has the management of the dotal property, but the marriage contract may give the wife a right to collect a part of her income on her own receipt. Real estate given as dowry cannot be conveyed or mortgaged during the marriage, except for the establishment of the wife's children or when it is necessary to release husband or wife from prison, furnish support for the family, or make heavy repairs, or to effect a division or pay the debts of the donor contracted previous to the marriage.

1557. "Dotal real estate may be conveyed when the marriage contract allows the conveyance thereof."

1562. "A husband, with respect to dotal property, is subject to all the obligations of a usufructuary.

"He is liable for all prescriptions which have taken effect and for any waste resulting from his negligence."

On the dissolution of the marriage the wife is entitled to the dotal property if she survives, and her heirs take it in case of her death.

1574. "All the property of the wife which has not been included in the settlement of dowry is paraphernal."

1575. "If all the wife's property is paraphernal, and if there are no provisions in the contract to make her contribute to a part of the household expenses, the wife contributes thereto to the extent of one-third of her income."

1576. "The wife has the management and enjoyment of her paraphernal property.

"But she cannot convey it or appear in court in connection with the same without the consent of her husband, or upon his refusal, without the authorization of the Court."

When the marriage is under the dotal system the parties may agree to a partnership in after acquired property. The subject of marriage contracts and rights of husband and wife is given great prominence and occupies forty-eight pages of this code, while in the statutes of England and the states of the American Union very little space is devoted to it.

The Sixth Title of the third book treats of sales. The rules given are in main merely clear statements of the generally accepted principles applicable to sales of property. There are some peculiar provisions however.

1626. "Although no stipulation as to warranty has been made upon the sale of property, the vendor is in duty bound to warrant the pur-

chaser against the ejectment which he is subject to from the whole or part of the property sold or against the alleged charges upon such property which have not been declared at the time of the sale."

1627. "The parties may, by special agreement, add to this obligation, which exists by right, or reduce its effect: they may even agree that the vendor shall not be subject to any warranty."

1641. "A vendor is bound to warrant against the hidden defects of the thing sold which render it unfit for the use for which it was intended, or which impair its use to such an extent that the purchaser would not have acquired it or would only have given a smaller price if he had known of them."

1642. "A vendor is not responsible for the apparent defects as to which the purchaser has been able to satisfy himself."

1654. "If the purchaser does not pay the price, the vendor may ask for the cancellation of the sale."

1659. "The right of redemption or repurchase is a covenant by which the vendor retains the power of taking back the thing sold by returning the purchase price and reimbursing what is specified in article 1673."

1660. "The right of redemption cannot be stipulated for a period exceeding five years."

"If it has been stipulated for a longer time it is reduced to that period."

1674. "If the vendor has suffered a loss of more than seven-twelfths of the price of real estate, he has the right to apply for the rescission of the sale, even if he has expressly renounced in the contract the right to ask for such rescission and has declared that he abandoned any increase in the value."

1683. "Rescission for lesion does not take place in favour of the purchaser."

1689. "In an assignment of a claim, of a right, or of an action against a third party the delivery takes place between the assignor and the assignee by handing over the instrument."

1682. "The sale or assignment of a claim includes the accessories of the claim, such as the security, the privileges and mortgages."

1693. "A person who sells a claim or any other incorporeal right must warrant its existence at the time of the assignment, though no warranty has been stipulated."

1699. "A person against whom a contested claim has been assigned can cause himself to be released therefrom by the assignee by reimbursing to him the actual price of the assignment, with the expenses and just charges and interest, from the day the assignee paid the price of the assignment made to him."

The Seventh Title is "Of Exchanges."

1700. "Rescission on account of lesion does not take place in contracts of exchange."

1707. "All the other rules set down for contracts of sale shall moreover apply to exchanges."

Title Eighth is "Of Contracts of Letting."

1713. "One may let all kinds of personal property or real estate."

1714. "Letting can be done in writing or verbally."

1717. "The lessee has the right to sublet or even to assign his lease to another person if this right has not been taken away from him.

"It can be taken away wholly or in part.

"This clause is always necessary."

1719. "A lessor is bound by the nature of the contract and without any special stipulation being required:

1. "To deliver to the lessee the property leased;
2. "To keep the property in good order so that it can be applied to the use for which it has been let;
3. "To secure to the tenant the peaceful enjoyment thereof during the continuance of the lease."

1728. "A lessee is bound to two principal obligations:

1. To make use of the property leased as a prudent owner, and according to the purposes intended by the lease, or according to those presumed under the circumstances if there is no agreement to that effect;
2. "To pay the price of the lease at the times agreed upon."

1733. "He is responsible in case of fire unless he proves:

"That the fire has taken place by accident or superior force or owing to bad construction;

"Or that the fire has spread from a neighboring house."

1763. "A person who cultivates land under condition of a division of the revenue with the lessor cannot sub-let or assign his lease unless such power has been expressly granted to him therein."

1764. "In case of violation of such a condition, the owner has the right to re-enter into possession and the lessee shall be ordered to pay the damages resulting from the non-performance of the lease."

1769. "If the lease is made for several years and during the lease the whole or at least the half of a crop has been destroyed accidentally, the farmer can ask for a reduction of the price of the lease unless his loss is made up by previous crops.

"If the loss has not been made up, an appraisal of the reduction can only be made at the end of the lease, at which time an average shall be taken of all the years of his occupancy.

"Nevertheless, the judge may temporarily exempt the lessee from paying a part of the price in consequence of the loss he has sustained."

1770. "If the lease is only for one year and the loss is of the whole crop or at least of one-half, the lessee shall be released from the payment of a proportionate part of the price of the lease.

He cannot claim any reduction if the loss is less than one-half."

Under this title are also included contracts for personal service. A person can only bind himself to serve for a certain time or special enterprise. Where no time is fixed, either party may terminate the service at pleasure. The Code Napoleon contains the following;

1781. "A master shall be believed upon his affirmation:

"As to the amount of the wages;

"As to the payment of the salary for the year elapsed;

"And as to the instalments paid for the current year."

But this was repealed in 1868.

Common carriers are subject generally to the same liabilities as inn-keepers for property intrusted to them and are responsible for its loss unless occasioned by accident or superior force. Workmen entrusted with materials are liable for losses resulting from their negligence, and lose labor and materials furnished by them where the property is accidentally destroyed before notice that the article is ready for delivery.

1792. "If the building constructed for a given price is destroyed, wholly or in part, owing to bad construction or even to some defect of the soil, the architect and the contractor are responsible for ten years."

1794. "An employer may of his own accord cancel a job which has been undertaken, even if the work has been already commenced, by compensating the contractor for all his expenses, his work and all he might have earned in such enterprise."

1795. "A contract for the letting of work expires by the death of the workman, the architect or the contractor."

Chapter 4 of this title relates to leases of cattle. Where there is a simple lease on equal shares, if all the cattle die the loss falls on the lessor, if only part the loss is divided.

1811. "It cannot be agreed:

"That the lessee shall bear the total loss of the cattle, although it occurred by accident and not through his negligence;

"Or that he shall bear a larger part of the losses than of the profits:

"Or that the lessor, at the end of the lease, shall be entitled to something more than the cattle have produced.

"Any agreement of this kind is void.

The lessee has the sole benefit of the milk, the manure, and the labour of the cattle leased.

"The wool and the growth of the cattle are divided."

Other forms of letting cattle on shares and in connection with leases of farms are provided for.

Title Ninth is "Of Contracts of Partnership."

1834. "Every partnership must be made in writing, if it is for an object of which the value exceeds one hundred and fifty francs.

"No oral testimony shall be admitted against or beyond the contents of the articles of co-partnership, nor as to what might be alleged to have been said previously to the same or at the time therefor or since then,

even in case of a sum or value less than one hundred and fifty francs."

Partnerships are divided into general and particular. General partnerships include those by which all of the property of the partners and the profits therefrom are placed in common and those where the earnings of the parties by their work are in common.

1841. "A particular partnership is one which only applies to certain specified things or to their use or to the revenue to be gathered therefrom."

1842. "A contract by which several persons become partners, either for a specified enterprise or for carrying on a trade or profession, is also a particular partnership."

1850. "Each partner is liable to the partnership for the damages occasioned by his negligence, and he cannot offset such damages against the profits which his work has brought him in connection with other business."

Most of the other rules accord with the general principles ordinarily recognized as to the rights and obligations of partners. When the shares of profits and losses are not fixed by contract they are divided in proportion to the capital contributed by each. When one partner is given the management by the articles of partnership he may act notwithstanding the objections of his partners, but in partnerships not commercial the partners are not liable for the debts jointly but only for their equal shares. The rules with reference to the dissolution of partnerships are similar to those of the common law.

Title Tenth is "Of Loans."

A loan of a thing for use and return to the owner is called a *commodatum*. The borrower is liable for its loss or injury due to his fault, but not otherwise. Loans for consumption are contracts by which the specified property is, to be consumed and the same kind and quantity returned. The borrower becomes the owner and any loss falls on him. In case return of like property cannot be made the borrower must pay the value at the time when and place where the thing was to be returned.

Title Eleventh is "Of Deposits and Sequestration."

1924. "When a deposit, being for more than one hundred and fifty francs, is not established by a writing, the person who is attacked as depositary is believed on his declaration, either as to the fact itself of the deposit, or the thing which formed the object thereof, or as to the fact of its restitution."

1927. "A depositary must bestow the same care in watching over the thing which is deposited as he bestows upon the things which belong to him."

1929. "A depositary is not in any case answerable for the accidents resulting from superior force, unless notice has been given to him to return the thing deposited."

He must return the identical thing deposited.

1949. "An obligatory deposit is one which was compulsory owing to some accident, such as a fire, complete destruction, pillage, shipwreck, or other unforeseen events."

1950. "Proof by witnesses is allowed in case of an obligatory deposit even if the amount involved exceeds one hundred and fifty francs."

1952. "Innkeepers or hotelkeepers are responsible as depositaries for the effects brought by the traveller who is stopping with them; a deposit of such kinds of effects shall be considered as an obligatory deposit."

They are responsible for thefts of the effects of travelers, but not for robberies or taking by superior force.

1955. "Sequestration is either conventional or judicial."

1956. "Conventional sequestration is a deposit made by one or several persons of a thing in dispute in the hands of a third party who binds himself to return it after the controversy is over to the person who shall obtain it by judgment."

1961. "Sequestration may be ordered by a Court:

1. In case of personal property of a debtor which has been attached;
2. In case the ownership or possession of real estate or personal property is in dispute between two or more persons;
3. In case the debtor offers certain things for his release."

Title Twelfth is "Of contingent Contracts." These are classified as: Insurance Contracts, Loans on Bottomry, Gaming and Betting and Annuities.

1965. "The law does not grant any action for a gaming debt or for the payment of a bet."

1966. "Games which tend to promote skill in the use of arms, races on foot or on horseback, tennis and other games of the same kind which develop skill and promote physical exercise, are excepted from the foregoing provisions.

"Nevertheless the Tribunal can dismiss the case when the sum seems excessive."

1967. "In no case can the loser claim back what he has voluntarily paid, unless there has been fraud, deceit or swindling on the part of the winner."

1968. "An annuity may be granted for a consideration in money, or for an article of personal property of some value, or for real estate."

1969. "It can also be granted, without consideration, by donation *inter vivos*, or by will. It must then be made in the form provided by law."

1971. "An annuity may be made either in favour of the person who furnishes the value thereof, or in favour of a third party who only has a right of enjoyment of the same."

Title Thirteenth is "Of Powers of Attorney."

1985. "A power of attorney can be given either by a public instrument or by a writing under private signature, even by letter. It can also be given verbally: but the proof thereof by witness is only admitted in accordance with the Title *Of Contracts*, or *Conventional Obligations in General*.

"The acceptance of the power may only be tacit, and result from the acting thereunder of the attorney-in-fact."

1991. "An attorney-in-fact is bound to carry out the power, so long as he has charge of acting under it, and he is responsible for the damages which might result from his failure to act.

"He is also bound to finish a matter commenced at the death of the principal if delay would be prejudicial."

1902. "An attorney-in-fact is answerable not only in case of fraud, but also for negligence in his management.

"Nevertheless, the responsibility in case of negligence is enforced less rigorously against a person who has acted without compensation under a power than against one receiving a salary."

1998. "A principal is bound to carry out the engagements contracted by the attorney-in-fact in accordance with the power which he has given him.

"He is only bound for what may have been done beyond it in case of his express or tacit ratification."

2003. "A power of attorney expires by the revocation of the attorney-in-fact;

By his renunciation of the power;

By the natural or civil death, the interdiction or the insolvency either of the principal or of the attorney-in-fact."

Title Fourteenth is "Of Security."

2011. "A person who answers as surety for an obligation undertakes with respect to the creditor to satisfy this obligation if the debtor does not satisfy it himself."

2013. "The security cannot exceed what is due by the debtor, nor be given under more rigorous conditions.

It can be given for a part of the debt, and under less rigorous conditions.

"The security which exceeds the debt or which is given under more rigorous conditions is not void: it shall only be cut down to the amount of the principal obligation."

2021. "A surety is only bound towards the creditor to pay him if the debtor fails to do so, and the latter's property must previously be seized, unless the surety has renounced the benefit of seizure, or unless he has bound himself jointly and severally with the debtor; in which case the effects of his undertaking are regulated by the principles which have been established for debts jointly and severally due."

But the creditor is only bound to seize the property of the principal when the surety demands it, points out the property and advances the costs.

2029. "A surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor."

2032. "A surety even before he has paid, can proceed against the debtor to be indemnified:

1. When such surety has been sued in court for payment;
2. When the debtor has become a bankrupt, or is insolvent;
3. When the debtor has undertaken to give him a release at the end of a certain time;
4. When the debt has become due by the expiration of the time for which it had been contracted;

5. At the end of ten years, when no time has been specified for the expiration of the principal obligation, unless the same is of such a nature as not to expire before a fixed time, such as a guardianship."

2033. "When several persons have become sureties for the same debtor upon the same debt, the surety who has paid the debt has a claim against all the other sureties for the share and portion of each of them.

But this claim only exists when the surety has paid in one of the cases mentioned in the foregoing article."

2037. "A surety is released when subrogation to the rights, mortgages and privileges of the creditor can no longer take place in favour of the surety owing to an act of such creditor."

2039. "A simple extension granted by a creditor to the principal debtor does not release the surety, who may in such case proceed against the debtor to compel him to pay."

Title Fifteenth is "Of Compromises."

2044. "A compromise is a contract by which the parties put an end to a controversy which has arisen or prevent a controversy about to arise.

This contract must be drawn up in writing."

2046. "A person can compromise as to the civil interests resulting from a misdemeanor.

"A compromise does not stop the action brought by the public Prosecutor."

2052. "Compromises have, between the parties, the effect of a final judgment.

"They cannot be attacked on account of an error of law, nor on account of injury."

2058. "Errors of calculation in a compromise shall be corrected."

Title Sixteenth "Of Executions Against the Person in Civil Matters" which was a part of the Code Napoleon, was repealed in 1867.

Title Seventeenth is "Of Pledges."

2072. "A pledge of personal property is called a pawn; A pledge of real estate is called *antichresis*."

2073. "A pawn confers upon the creditor the right to cause himself to be paid out of the thing pawned by way of privilege and in preference to other creditors."

2078. "A creditor cannot, in case of non-payment, dispose of a pawn; but he must have the Court's order that he shall retain the pawn as payment and to the extent of its value, according to an appraisal made by experts, or that it shall be sold at auction.

"All covenants allowing a creditor to appropriate the pawn, or to dispose of it without complying with the formalities above set forth, shall be void."

2084. "The foregoing provisions do not apply to commercial matters, nor to pawn establishments duly authorized, and as to which the laws and regulations relating to them shall be followed."

2085. "*Antichresis* can only be created by virtue of a writing.

"By such an agreement a creditor only acquires the right to collect the revenues of the real estate on condition of applying them annually to the payment of the interest, if any is due to him, and thereafter to the payment of the capital of his claim."

The creditor is bound to pay the taxes and keep the property in repair out of the revenue received from it.

2088. "A creditor does not become the owner of the real estate by the mere failure to pay at the time agreed upon; any clause to the contrary is void: in such case he can resort to legal measures to have his debtor dispossessed."

Title Eighteenth is "Of Privileges and Mortgages."

2095. "A privilege is the right which the nature of the claim gives to a creditor to be preferred to other creditors, even to mortgagees."

2101. "Privileged claims on all personal property generally are those hereinafter set forth, and can be asserted in the following order.

1. Court expenses;

2. Funeral expenses;

3. (Amended by law of 30th November, 1892). All expenses relating to the last illness, pro rata among those to whom they are due, whatever may have been its termination;

4. The wages of servants for the year elapsed and what is due for the current year;

5. Supplies of provisions furnished to the debtor or his family, viz.:—during the last six months by retail dealers, such as bakers, butchers and others; and during the last year by boarding-house keepers and wholesale dealers."

Privileged claims are allowed on certain articles of property; as to a landlord on the crops raised by or furniture of the tenant, subject to debts for seeds and implements, to the seller for the price of the thing sold while in the possession of the buyer, to an innkeeper on the effects of his guests in his inn, to a carrier for the charges on the thing carried.

Preferred creditors as to real estate are, vendors for purchase money, those who furnish purchase money to the buyer. Architects, contractors, masons and other workmen for work in constructing or repairing buildings, and one who loans the money to pay them for their work. Privileges relating to real estate must have been inscribed on the register of mortgages with certain exceptions.

2117. "Legal mortgages are those resulting from the law. Judicial mortgages are those resulting from judgments or judicial acts. Conventional mortgages are those resulting from agreements and from the special provisions of deeds and contracts."

2118. "The following property only can be mortgaged:

1. Real estate in trade and its accessories considered as real estate;
2. The usufruct of the same property and its accessories during the time of its duration."

2119. "Personal property cannot be subject to a mortgage."

2121. "The rights and claims to which a legal mortgage is attached are: Those of married women, on the property of their husbands;

Those of minors and interdicted persons, on the property of their guardians;

Those of the State, Districts, and of public establishments, on the property of collectors and administrators who are accountable."

2122. "A creditor who has a legal mortgage can enforce his right upon all the real estate belonging to his debtor, and upon the real estate which may come to him in the future, subject to the restrictions hereinafter contained."

A judicial mortgage results from a judgment in favor of a party and from acknowledgments in the judgment of signature to an instrument containing an obligation.

2124. "Conventional mortgages can only be granted by those who have the capacity of conveying the real estate which they subject to them."

2127. "A conventional mortgage can only be granted by deed executed in the public form in the presence of two notaries or of one notary and two witnesses."

2134. "A mortgage, whether legal, judicial, or conventional, only ranks among creditors from the day of the inscription which the creditor has caused to be made on the registers of the Registrar in the form and manner directed by law, with the exceptions mentioned in the following article."

Mortgages exist independently of any inscription in favor of minors on lands of their guardian, of married women for dowries and settlements on real estate of their husbands. This is subject to various exceptions and qualifications given at considerable length. Inscriptions of privileges and mortgages are made at the office of the Registrar of Mortgages.

2150. "The Registrar enters on his register the contents of the state-

ment and hands to the appearer the instrument or certified copy of the same, and also one of the statements, at the foot of which he certifies that he has made the inscription."

2154. "Inscriptions keep the mortgage and the privilege alive for ten years from the day of their date; their effect ceases if these inscriptions have not been renewed before the expiration of this period."

2157. "Inscriptions shall be cancelled by the consent of the parties interested and having capacity therefor, or by virtue of a judgment of the highest Court, or one which has become final."

2160. "Cancellation must be ordered by the Tribunals when the inscription has been made without being based upon the law or upon an agreement, or when it has been made upon an instrument which was either irregular or has come to an end, or has been satisfied, or when the rights of privilege or mortgage have been wiped out by operation of the law."

2166. "Creditors who have a privilege or mortgage on real estate which has been inscribed follow the real estate through whatever hands it may pass and rank and are paid according to the rank of their claims or inscriptions."

2169. "If a third party in possession fails to fully comply with one of these obligations, each mortgagee has the right to cause the real estate to be sold thirty days after the service upon the original debtor of a demand and after service upon the third party in possession of a notice to pay the debt which has become due or to abandon the estate."

Where a purchaser of real estate wishes to free it from privileges and mortgages he may have his conveyance transcribed on the register of the Registrar and give notice of his purchase to the creditors. The creditors may then take the consideration paid by him to be applied according to priority, or any creditor may apply for a public sale of the property deeded. The creditor so applying must consent to raise the price one tenth above the contract price. If the purchaser becomes the highest bidder and pays more than his contract calls for he has a remedy over against the seller for the excess in price which he is compelled to pay the creditors. Registers are public and any person is entitled to a copy of any record. The Registrars are liable for omissions to record or make correct certificates.

Title Nineteenth is "Of Compulsory Ejectment and of Rank among Creditors."

2204. "A creditor may sue for ejectment:

1. From real estate or its accessories deemed to be real property owned in fee by his debtor; 2. From the usufruct belonging to the debtor upon property of the same nature."

2209. "A creditor cannot sue to have real estate which has not been mortgaged to him sold, unless the property mortgaged to him is of insufficient value."

2212. "If a debtor establishes by leases in the public form that the net and available revenue of his real estate during one year is sufficient for the payment of the principal, interest and costs of the debt, and if he offers the assignment thereof to the creditor, the proceedings may be stayed by the Judges, but may be renewed in case of an attachment or if some other obstacle to the payment arises."

2213. "A forced sale of real estate can only be applied for by virtue of an instrument in public form, and upon which execution can be issued. and for a duly established and liquidated debt. If the debt is for money, but is not liquidated, the proceedings are regular, but a public sale can only take place after the same has been liquidated."

2215. "Proceedings can result from a provisional or final judgment giving the right to immediate execution, notwithstanding an appeal; but a public sale can only take place after a final judgment of the highest Court or when a judgment has become final.

"Proceedings cannot be instituted in consequence of a judgment by default during the time the default can be opened."

Previous to all proceedings for ejectment a demand for the debt must be served on the debtor by a sheriff.

The Twentieth and last title is "Of Prescriptions."

2219. "Prescription is a way of acquiring property or of releasing oneself at the end of a certain period of time and under conditions specified by law."

2220. "A person cannot renounce prescription beforehand: he can renounce prescription which has taken effect."

2225. "Creditors or any other persons whose interest it is that prescription should have taken place can set it up, even if the debtor or owner renounces it."

2227. "The State, public institutions and districts are subject to the same prescriptions as private individuals, and can set them up in the same manner."

2228. "Possession is the retention or enjoyment of a thing or of a right which we have and which we make use of, either ourselves or by another person who holds it or makes use of it in our name."

2229. "In order that prescription should take place it is necessary to have a continuous, uninterrupted, peaceful, public and unambiguous possession in the capacity of owner."

2236. "Those who hold possession for third parties never acquire by prescription, whatever time may have elapsed.

"Thus, a lessee, a depositary, a usufructuary, and all others who hold the property of an owner, not as their own, cannot acquire it by prescription."

Prescription is interrupted by loss of possession one year, or a citation to appear in court by one who wishes to prevent the prescription or by an admission of the right of the adverse party by the one in possession. Prescription does not run against minors and interdicted persons, nor

between husband and wife, nor against a claim depending upon a condition till the condition takes place.

2260. "Prescription is counted by days and not by hours."

2261. "It takes effect when the last day of the period has passed."

A bona fide purchaser of real property gains a good title by ten years possession, where the owner resides in the district where it is situated, and in twenty years where he resides outside the district. Suits for wages are generally barred in six months, for the compensation of physicians, surgeons, dentists, druggists and solicitors, in two years, for arrears of annuities, allowances for support, rent of lands and interest on loans, in five years. Other prescriptions are made by various provisions of the code and other laws.

It must not be inferred that the quotations above given contain all the provisions on a particular subject or that a summary has been made of all matters of minor importance. The effort has been merely to give enough to indicate the general frame of the code and those rules which are peculiar to it. It contains many provisions taken from the code of Justinian, yet the absence of slavery and of the *patria potestas*, so important in the Roman law, eliminates much of that which was most conspicuous in the laws of Justinian. It is in contrast with the code of China in the fundamental particular of punishments and penalties and in most other particulars, with the code of Manu in the absence of castes and of religious dogmas, and with the laws of England and the United States, in its provisions for records of personal matters, its family council, regulation of marriage and divorce, marriage contracts, wills and donations, privileges and mortgages, and other minor particulars. The absence of all provisions concerning private corporations, railroads, telegraphs, warehouses and other minor topics familiar to the English and American lawyer is noticeable. Procedure in the courts is regulated by a separate code.

Note. The passages above quoted are from the translation of Henry Cachard published by Banks Brothers in 1895 and include amendments made prior to that time.

THE CIVIL CODE OF GERMANY

The Civil Code of Germany was promulgated by the emperor William on August 18, 1896, to become in force on January 1, 1900. It is divided into 2385 paragraphs and the translation fills an ordinary octavo volume of 535 pages. It is divided into five books subdivided into Sections, Titles and numbered paragraphs.

The first book contains "General Principles"; the first Section treats of Persons, and the first title of Natural Persons,

1. "The legal capacity of a human being begins with the completion of birth."

2. "Majority begins with the completion of the twenty-first year of age."

3. "A minor who has completed his eighteenth year of age may be declared of full age by order of the Guardianship Court.

"By the declaration of majority the minor acquires the legal status of a person of full age."

4. "The declaration of majority is permissible only if the minor gives his approval. If the minor is under parental power, the approval of the parent is also necessary, unless he has neither the care of the person nor of the property of the child. For a minor widow the approval of the parent is not necessary."

5. "The declaration of majority should issue only if it will promote the welfare of the minor."

6. Provides for interdicting persons who are insane, feeble-minded, prodigal or habitual drunkards.

The remaining paragraphs of this title prescribe rules for determining domicile and for declaring dead those who have disappeared, making different periods of time sufficient to raise a presumption of death according to the difference in age and circumstances attending the disappearance, ranging from one year in case of persons disappearing with a vessel lost at sea to ten years. "If several persons have perished in a common peril it is presumed that they died simultaneously."

The second title treats of "Juristic Persons."

21. "An association whose object is not the carrying on of an economic enterprise, acquires juristic personality by registration in the register of associations of the competent District Court."

22. "An association whose object is the carrying on of an economic enterprise acquires juristic personality, in the absence of special provisions of Imperial law, by grant from the State. The power to make such grant belongs to the State in whose territory the association has its seat."

23. "An association whose seat is not in any state may, in the absence of special provisions of imperial law, be granted juristic personality by resolution of the Federal Council."

24. "Unless it is otherwise provided, the place where the affairs of an association are managed is deemed to be its seat."

25. "The constitution of an association having juristic personality so far as it does not depend on the following provisions, is determined by the articles of association."

26. "The association must have a directorate. The directorate must consist of several persons.

"The directorate represents the association in judicial proceedings and all other affairs; it is in the position of a statutory agent. The extent of its representative authority, as against third persons, may be limited by the articles."

Directors are appointed by resolution of the members, and may be removed under certain limitations. The articles of association may be altered by resolution of three-fourths of the members present. A member's meeting shall be called on demand of the prescribed number of members, and the District Court may authorize the call.

38. "Membership is not transferable, and does not pass by inheritance. The exercise of the right of membership may not be delegated to another person." But the provisions of 38 do not apply where the articles provide otherwise.

An association may be dissolved by resolution of three-fourths of the members, and it loses juristic personality by the institution of bankruptcy proceedings. Juristic personality may be withdrawn for misconduct. In case of dissolution the affairs are wound up by the directorate or by liquidators.

54. "Associations which have not juristic personality are subject to the provisions relating to partnership. If a member of such an association, acting in the name of the association, enters into a juristic act with a third party, that member is personally liable; if several members so act, they are liable as joint debtors."

Registration of associations is made in the District Court where the association is not one carrying on an economic enterprise. The articles of association must be signed by seven members, must state the objects, name and seat of the association, and should also contain provisions containing the admission and withdrawal of members, the contributions made by them, the constitution of the directorate and the provisions relating to meetings of members. On registration the name receives the title of "registered association". Changes in the directorate and in the articles must be registered. If the number of members falls below three, juristic personality is withdrawn. Proceedings connected with the dissolution of associations and the settlement of their affairs must be reported for registration, and the records are open to public inspection.

Section Second deals with things, gives the definition of different terms used to designate different classes of things, distinguishing movable things from lands, gives rules for determining what is deemed a part of the

land and what movable and some for determining rights to the fruits of things and the burdens to be borne by those whose rights are limited in duration.

The third section treats of Juristic Acts. The first title deals with "disposing capacity."

104. "A person is incapable of disposing—

1. Who has not completed his seventh year of age;
2. Who is in a condition of morbid disturbance of the mental activity incompatible with a free determination of the will, in so far as the condition is not temporary in its nature;
3. Who has been interdicted on account of insanity."

105. "The declaration of intention of a person incapable of disposing is void. A declaration is also void which is made in a condition of unconsciousness or temporary disturbance of the mental activity."

Following these paragraphs are others relating to contracts of minors and others under disability, ratification and repudiation of them, giving rules as to void and voidable acts of persons under disability similar in most particulars to the rules prevailing in most countries.

The succeeding titles of this section deal with "Declaration of Intention," "Contract", "Conditions—Limitation of Time", Agency—Power of Agency", and "Approval—Ratification." Though the arrangement of these titles and the treatment of the subjects is peculiar the substance of the rules declares is substantially the same as the Roman Civil Law, with some provisions with reference to formalities made necessary by changed conditions. Dealings by telegraph and telephone are recognized in matters not requiring writings or official attestation.

The fourth section deals with "Periods of Time—Dates". The rules accord with those usually followed in the business world.

The fifth section is entitled "Prescription".

194. "The right to demand an act or forbearance from another is subject to prescription. A claim arising from a relation of family law is not subject to prescription, so far as it has for its object the establishment for the future of the condition proper to the relation."

195. "The regular period of prescription is thirty years." 196 gives seventeen classes of claims for which the period of prescription is two years. These include most claims for goods sold and delivered and services rendered including those of carriers and professional men. The period is four years for claims for interest and instalments of principal, for arrears of rent, annuities, recurrent acts stipulated for in the transfer of a farm, salaries, pensions, allowances for maintenance and all other periodical payments. Full provisions are made for determining the time from which the prescription begins to run and the states of fact which will have the effect of suspending its operation.

225. "Prescription may neither be excluded nor made more onerous by juristic act. Prescription may be facilitated, especially by shortening the period of prescription."

The sixth section deals with "self-defence and self-help" in six paragraphs declaring the rules generally recognized on these subjects.

The seventh section treats of "Giving of Security."

232. "If a person has to give security, he may do so:

- (a) By lodging money or negotiable instruments;
- (b) By pledge of claims which have been registered in the Imperial debt ledger or the state debt ledger of one of the States;
- (c) By pledge of moveables;
- (d) By charging hypothecas on land situate within the Empire;
- (e) By pledge of claims secured by hypotheca on land situate within the Empire, or by pledge of land charges or annuity charges on land situated within the Empire.

If security cannot be given in this manner it is permissible to furnish a proper surety."

235. "If a person has given security by lodging money or negotiable instruments, he is entitled to exchange the money lodged for suitable negotiable instruments, or the negotiable instruments lodged for other suitable negotiable instruments, or for money."

The leading purpose of this section seems to be to enable the person giving security to do so with his own property without involving his friends as sureties. Its provisions may be studied with profit by American legislators.

The Second Book treats of the "Law of Obligations". The first title is "Obligation of Performance". It covers not only obligations for the payment of money, delivery of property, and performance of contractual obligations but also negligence in the non-performance of duties which the debtor is bound to perform.

246. "If by law or juristic act a debt is to bear interest, four per cent. per annum shall be paid, unless some other rate is specified."

247. "If a higher rate of interest than six per cent. per annum is agreed upon, the debtor may, after the expiration of six months, give notice of the payment of the principal, six months notice being required. The right of payment on notice may not be excluded or limited by contract. These provisions do not apply to obligations to bearer."

A contract for interest on interest is void, except when made by banking institutions for interest on deposits. These seem to be the only restrictions on usury.

The second title is "Default of the Creditor" and declares his duties to accept performance, and to make counter-performance on his part where obligated so to do.

The arrangement of the subjects covered by the remainder of the second book is as follows:

Second Section. Obligations ex Contractu.

First Title. Creation of an Obligation—Scope of a Contract.

A contract impossible of performance is void, but may subject the maker to damages if he knew of the impossibility.

310. "A contract whereby one party binds himself to convey his future property or a fractional part of his future property or to charge it with a usufruct, is void."

"A contract whereby one party binds himself to convey his present property or to charge it with a usufruct, requires judicial or notarial authentication."

Second Title. Mutual Contracts.

Third Title. Promise of Performance in favor of a Third Party.

328. "An act of performance in favor of a third party may by contract be stipulated for in such manner that the third party acquires a direct right to demand the performance," and this right may be inferred from circumstances, and it may also be inferred where the parties to the contract have the power to change or take away the third party's right.

335. "The promisee may, unless a contrary intention of the contracting parties is to be presumed, demand performance in favour of the third party, even though the right of the performance is in the latter."

Fourth Title. Earnest—Stipulated penalty.

"In case of doubt the earnest is not deemed to be a forfeit," and in case of doubt shall be credited on the performance, and if the contract is rescinded shall be returned. If the giver of the earnest is responsible for the failure of performance or the contract is rescinded for his fault the holder may retain it."

340. "If the debtor has promised the penalty for the case of his non-fulfilling his obligation, the creditor may demand the forfeited penalty in lieu of fulfillment. If the creditor declares to the debtor that he demands the penalty, the claim for fulfillment is barred.

"If the creditor has a claim for compensation for non-performance, he may demand the forfeited penalty as the minimum amount of the damage. Proof of further damage is admissible."

343. "If a forfeited penalty is disproportionately high, it may be reduced to a reasonable amount by judicial decree obtained by the debtor."

...

Fifth Title. Rescission.

Third Section. Extinction of Obligations.

First Title. Fulfilment.

Second Title. Lodgment.

372. "A debtor may lodge for the benefit of his creditor, money, negotiable instruments and other documents and valuables in a public place designated for that purpose, if the creditor is in default of acceptance. The same rule applies if, for any other reason affecting the creditor personally, or in consequence of uncertainty concerning the identity of the creditor, not due to negligence, the debtor cannot fulfill it with safety."

373. "If the debtor is bound to perform only after counter-performance has been effected by the creditor, he may make the right of the creditor to

receive the thing lodged dependent upon counter-performance by the creditor."

374. "The lodgment shall be made in the lodgment-office of the place where the performance is to be effected; if the debtor makes the lodgment in any other place, he shall compensate the creditor for any damage arising therefrom. The debtor shall without delay notify the creditor of the lodgment; if he fails to do so he is liable for compensation. The notification may be dispensed with if it is impracticable."

376. "The debtor has the right to withdraw the thing lodged. The right of withdrawal is barred:

1. If the debtor declares to the lodgment-office that he waives the right of withdrawal;

2. If the creditor declares his acceptance to the lodgment-office.

3. If non-appealable judgment between the creditor and the debtor declaring the lodgment legitimate is presented at the lodgment-office."

379. "If the right to withdraw the thing lodged is not barred, the debtor may refer the creditor to the thing lodged.

"As long as the thing is on lodgment the creditor bears the risk, and the debtor is not bound to pay interest or compensation for emoluments not drawn.

"If the debtor withdraws the thing lodged, the lodgment is deemed not to have been made."

380. "In so far as a declaration of the debtor recognising the creditor's right to receive is necessary or adequate as evidence of such right according to the regulations governing the lodgment-office, the creditor may demand from the debtor the delivery of the declaration under the same conditions under which he would have been entitled to demand the performance, if the lodgment had not taken place."

Provision is made for the sale of movables not suitable for lodgment, if the creditor is in default, and lodgment of the proceeds.

Third Title. Set-off.

Fourth Title. Release.

Fourth Section. Transfer of Claims.

398. "A claim may by contract with another person, be transferred by the creditor to him. On the conclusion of the contract the assignee takes the place of the assignor."

399. "A claim is not assignable if the performance cannot be effected in favor of any person other than the original creditor without alteration of its substance, or if assignment is excluded by agreement with the debtor."

400. "A claim is not assignable if it is not subject to judicial attachment."

404. "The debtor may set up all defenses against the assignee which at the time of the assignment of the claim, were available against the assignor."

406. "The debtor may also set off against the assignee an existing

claim which he has against the assignor, unless he had knowledge of the assignment at the time of the acquisition of the claim, or unless the claim did not become due until after he had acquired such knowledge and after the maturity of the assigned claim."

410. "The debtor is bound to perform in favor of the assignee only upon production of an instrument of assignment executed by the assignor. A notice or a warning by the assignee is of no effect, if it is given without production of such an instrument, and the debtor without delay rejects it for this reason. These provisions do not apply if the assignor has given written notice of the assignment to the debtor."

413. "The provisions relating to the transfer of claims apply *mutatis mutandis* to the transfer of other rights, unless the law provides otherwise."

Fifth Section. Assumption of Debt.

Sixth Section. Plurality of Debtors and Creditors.

Seventh Section. Particular kinds of Obligations.

First Title. Sale—Exchange.

Second Title. Gift.

518. "For the validity of a contract whereby an act of performance is promised gratuitously, judicial or notarial authentication of the promise is necessary. If a promise of debt or acknowledgment of debt of the kind specified in 780, 781, be made gratuitously, the same rule applies to the promise or the declaration of acknowledgment."

519. "A donor is entitled to refuse fulfilment of a promise made gratuitously in so far as, having regard to his other obligations, he is not in a position to fulfil the promise without endangering his own maintenance suitable to his station in life or the duties to furnish maintenance to others imposed upon him by law. If the claims of several donees conflict, the claim which first arose takes priority."

521. "A donor is responsible only for wilful default and gross negligence."

522. "A donor is not bound to pay interest for default."

A donor is bound to make good a defect of title or fraudulently concealed defect of quality in the thing given, and to acquire title to an article promised that he does not own.

528. "Where the donor after the execution of the gift, is not in a position to maintain himself in a manner suitable to his station in life, and to fulfil the statutory duty to furnish maintenance imposed on him in favor of his relatives by blood, his wife, or his former wife, he may demand the donee to return the gift under the provisions relating to the return of unjustified benefits. The donee may avoid the return by payment of the sum necessary for such maintenance. . . ."

529. "The claim to the return of a gift is barred if the donor has brought about his poverty wilfully or by his gross negligence, or if at the time of his impoverishment ten years have elapsed since the delivery of the object given. The same rule applies if the donee, having regard

to his other obligations, is not in a position to return the gift without endangering his own maintenance suitable to his station in life, or the fulfilment of the duties to furnish maintenance to others imposed upon him by law.

530. "A gift may be revoked if the donee renders himself guilty of gross ingratitude by any serious misconduct towards the donor or a near relation of the donor. The right to revoke belongs to the heirs of the donor only if the donee has wilfully and unlawfully killed the donor, or prevented him from revoking."

(All of the foregoing provisions relating to gifts are unknown to the Common Law of England and the United States.)

534. "Gifts which are made in compliance with a moral duty or the rules of social propriety are not subject to recall or revocation."

Third Title. Ordinary Lease. Usufructuary Lease.

559. "The lessor of a piece of land has, by way of security for his claims arising from the lease, a right of pledge over the things brought upon the premises by the lessee. The right of pledge may not be enforced for future claims for compensation nor for any rent for a later time than the current and following year of the lease. It does not extend to things not subject to judicial attachment."

560. "The lessor's right of pledge is extinguished by the removal of the things from the land unless the removal takes place without the knowledge or in spite of an objection of the lessor. The lessor may not object to the removal if it takes place in the regular course of business of the lessee, or in accordance with the ordinary affairs of life, or if the things remaining on the premises are evidently sufficient for the security of the lessor."

562. "The lessee may prevent the enforcement of the lessor's right of pledge by giving security; he may release each individual thing from the right of pledge by giving security to the extent of its value."

Fourth Title. Loan for Use.

Fifth Title. Loan for Consumption.

Sixth Title. Contract for Service.

618. "A master has so to fit up and maintain rooms, appliances and implements which he has to provide for the performance of the service and so to regulate the services which are to be performed under his orders or under his direction that the servant is protected against danger to life and health as far as the nature of the service permits.

"If the servant is taken into the household, the master shall make such arrangements and regulations with regard to living and sleeping rooms, sustenance, and time for labor and for recreation as are necessary with regard to the health, morality and religion of the servant."

619. "The obligations imposed upon the master by 617, 618 may not be avoided or limited by contract in anticipation."

Where the termination of the service is not fixed by contract various

notices to terminate it are required corresponding generally with the periods by which the compensation for the service is measured.

626. "Notice to terminate the service relation may be given by either party without observance of any term of notice if a grave reason exists."

630. "On the termination of a continuous service relation the servant may demand from the other party a written testimonial as to the service relation and its duration. The testimonial shall on demand contain a statement as to his efficiency and conduct in service."

Seventh Title. Contract for Work.

Eighth Title. Brokerage.

Ninth Title. Promise of Reward.

Tenth Title. Mandate.

662. "By the acceptance of a mandate the mandatary binds himself gratuitously to take charge of an affair for the mandator entrusted to him by the latter.

671. "A mandate may be revoked at any time by the mandator, and terminated by notice at any time by the mandatary.

"The mandatary can give notice only in such manner that the mandator can make other arrangements for the charge of the affair, unless a grave reason exists for the improper notice. If he gives improper notice without such reason, he shall compensate the mandator for any damage arising therefrom.

"If a grave reason exists the mandatary is entitled to give notice even though he has waived the right to do so."

676. "A person who gives advice or a recommendation to another is not bound to compensate for any damage arising from following the advice or the recommendation, without prejudice to his responsibility resulting from a contract or an unlawful act."

Eleventh Title. Management of Affairs without Mandate.

677. "A person who takes charge of an affair for another without having received a mandate from him or being otherwise entitled to do so in respect of him, shall manage the affair in such manner as the interest of the principal requires, having regard to his actual or presumptive wishes."

679. "The fact that the management of the affair is opposed to the wishes of the principal is not taken into consideration if, without the management of the affair, a duty of the principal the fulfilment of which is of public interest or a statutory duty to furnish maintenance to others by the principal would not be fulfilled in due time."

680. "If the management of the affair has for its object the averting of an imminent danger which threatens the principal the agent is responsible only for wilful default and gross negligence."

Twelfth Title. Deposit.

688. "By a contract of deposit the depositary is bound to keep in his custody a moveable delivered to him by the depositor."

689. "Remuneration for the custody is deemed to have been tacitly agreed upon if under the circumstances the undertaking of the custody is to be expected only for remuneration."

690. "If the custody is undertaken gratuitously, the depositary shall be responsible only for such care as he is accustomed to exercise in his own affairs."

Thirteenth Title. Delivery of Things to Innkeepers.

701. "An innkeeper who makes a business of receiving and lodging guests shall compensate a guest received in the course of business for any damage which the latter suffers through the loss or damage of things brought upon his premises. The duty to make compensation does not arise if the damage is caused by the guest, an attendant of the guest, or a person whom he has received, or if it occurs by reason of the character of the things, or by *vis major*."

"Things are deemed to have been brought upon the premises which the guest has delivered to the innkeeper or the innkeepers servant who has been appointed to receive the things or in the circumstances are deemed to have been so appointed, or which he has brought to a place designated to him by them, or in the absence of such designation, to a place provided for such purpose. A posted notice whereby the innkeeper disclaims liability is of no effect."

702. "For money, negotiable instruments, and valuables the innkeeper is liable under 701 only to the amount of one thousand marks, unless he receives these articles into his custody with knowledge of their character as valuables, or refuses to undertake the custody, or unless the damage is due to the fault of himself or his servants."

704. "The innkeeper has a right of pledge over the things brought upon the premises by the guest by way of security for his claims for lodging and other services afforded to the guest in satisfaction of his needs, including disbursements."

Fourteenth Title. Partnership.

709. The management of the affairs of the partnership belongs to all the partners in common; for every affair the consent of all the partners is necessary."

"If in accordance to the contract of partnership, the majority of the votes is to decide, the majority shall, in case of doubt, be reckoned according to the number of partners."

711. "If, according to the contract of partnership, the management of affairs belongs to all or to several partners in such manner that each is entitled to act alone, then each may oppose the undertaking of any affair by another. In case of opposition the affair must be left undone.

"If a partnership is not entered into for a fixed time, every partner may at any time give notice of its dissolution."

725. "If a creditor of one partner has levied judicial attachment on the share of the partner in the partnership property, he may give notice

of the dissolution of the partnership without observance of any term of notice, unless his title in the debt is only provisionally executory.

"So long as the partnership exists the creditor may not enforce the rights of the partner arising out of the partnership, with the exception of the claim to a dividend."

Fifteenth Title. Community of Ownership.

744. "The management of the common object belongs to the participants in common. Each participant is entitled to take any measure necessary for the preservation of the object without the consent of the other participants; he may require that they give their approval in advance for such a measure."

745. "By a vote of the majority regulations for management and use corresponding to the character of the common object may be determined upon. The vote of the majority shall be reckoned according to the value of the shares."

747. "Each participant may dispose of his share. The participants may dispose of the common object only as a whole and only when they are acting in common."

752. "The dissolution of the community is effected by partition in kind, if the common object or objects can be distributed without diminution of value into similar parts proportional to the shares of the participants. The distribution of equal parts among the participants is made by lot.

753. "If partition in kind is impossible, the dissolution of the community is effected by sale of the common object under the provisions relating to sale of pledges; in the case of land, by compulsory auction and distribution of the proceeds, if alienation to a third person is not permitted, the object shall be sold by auction among the participants."

Sixteenth Title. Annuities.

Seventeenth Title. Gaming—Betting.

762. "No obligation is created by gaming or betting. What has been given by reason of the gaming or betting may not be demanded back on the ground that no obligation existed.

"These provisions apply also to an agreement whereby the losing party, for the purpose of satisfying a gaming debt or a bet, incurs an obligation toward the other party, e.g. an acknowledgment of debt."

763. "A lottery contract or a raffle contract is binding if the lottery or the raffle is ratified by the government. In all other cases the provisions of 762 apply.

764. "If a contract purporting to be for the delivery of goods or negotiable instruments is entered into with the intention that the difference between the price agreed upon and the exchange or market price at the time of delivery shall be paid by the losing to the winning party, the contract shall be deemed to be a gaming contract. This applies also if only one of the parties knows or ought to know of this intention."

Eighteenth Title. Suretyship.

774. "Where the surety satisfies the creditor the claim of the creditor against the principal debtor is transferred to him. The transfer may not be enforced to the detriment of the creditor. Defenses of the principal debtor arising from a legal relation existing between him and the surety remain unaffected.

Nineteenth Title. Compromise.

Twentieth Title. Promise of debt—Acknowledgment of Debt.

780. "For the validity of a contract whereby an act of performance is promised in such manner that the promise itself is to create the obligation, a written statement of the promise is necessary unless some other form is prescribed.

782. "If a promise of debt or an acknowledgment of debt is issued in consequence of an agreed account, or by way of compromise, the written form prescribed in 780, 781 is unnecessary."

Twenty-first Title. Orders to pay or deliver.

790. "A drawer may revoke his order as against the drawee, so long as the drawee has not accepted the order in favor of the payee, or has not made payment or delivery. This applies even though the drawer by the revocation acts contrary to an obligation imposed upon him in favor of the payee."

791. "An order to pay or deliver is not extinguished by the death or occurrence of disposing incapacity of one of the parties."

Twenty-Second Title. Obligations to Bearer.

793. "If a person has issued an instrument in which he promises to perform an act in favor of the bearer of the instrument, the bearer may require him to effect the promised performance, unless he is not entitled to dispose of the instrument. The maker is, however, released from his obligation by performing in favor of a bearer, even though the latter is not entitled to dispose of the instrument. The validity of the signature may, by a provision contained in the instrument, be made subject to the observance of a particular form. For the signature a subscription made by means of mechanical reproduction is sufficient."

794. "The maker is bound by an obligation to bearer even if it has been stolen from him, or lost by him, or has otherwise passed into circulation without his consent.

"The validity of an obligation to bearer is not affected by the fact that the instrument is issued after the maker has died or has become incapable of disposing."

795. "Obligations to bearer issued within the Empire in which the payment of a certain sum of money is promised may be put in circulation only with the ratification of the Government.

"The ratification is given only by the central authority of the State in whose territory the maker has his domicile or his industrial location. The giving of the ratification and the conditions under which it is given shall be published in the *Deutscher Reichsanzeiger*.

"An obligation which has passed into circulation without the ratification of the Government is void; The maker shall compensate the bearer for any damage caused by its issue."

796. "The maker may set up against the bearer of the obligation only the defenses which affect the validity of the issue, or appear from the instrument itself or which the maker has directly against the bearer."

Twenty-third Title. Production of Things.

This title gives an interested party the right to inspect things or documents in the possession of another.

Twenty-fourth Title. Unjustified Benefits.

812. "A person who, through an act performed by another, or in any other manner, acquires something at the expense of the latter without legal ground, is bound to return it to him. He is so bound even if a legal ground originally existing disappears subsequently, or a result originally intended to be produced by an act of performance done by virtue of a juristic act is not produced.

"Recognition of the existence or non-existence of a debt, if made under a contract is also deemed to be an act of performance."

813. "The value of an act of performance done for the purpose of fulfilling an obligation may be demanded back even if there was a defense to the claim whereby the enforcement of the claim was permanently barred. . . ."

814. "The value of an act of performance done for the purpose of fulfilling an obligation may not be demanded back if the person performing knew that he was not bound to effect the performance, or if the performance was in compliance with a moral duty, or the rules of social propriety."

821. "A person who incurs an obligation without legal ground may refuse performance, even if the claim for release from the obligation has been barred by prescription."

822. "If the recipient of a benefit transfers such benefit gratuitously to a third party, and if in consequence of this the obligation of the recipient for return of the benefit is excluded, the third party is bound to return the benefit as if he had received it from the creditor without legal ground."

Twenty-fifth Title. Unlawful Acts.

823. "A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or any other right of another is bound to compensate him for any damage arising therefrom."

"A person who infringes a statutory provision intended for the protection of others incurs the same obligation. If, according to the purview of the statute, infringement is possible without any fault on the part of the wrong-doer, the duty to make compensation arises only if some fault can be imputed to him."

824. "A person who maintains or publishes, contrary to the truth, a statement calculated to endanger the credit of another, or to injure his

earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom even if he does not know of its untruth, provided he ought to know it.

"A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a legal interest in it."

833. "If a person is killed, or the body or health of a person is injured, or a thing is damaged by an animal, the person who keeps the animal is bound to compensate the injured party for any damage arising therefrom."

835. "If land over which its owner does not have the sporting rights is damaged by wild boar, red deer, elk, fallow deer, roe, deer, or pheasants, the person who has the sporting rights is bound to compensate the injured party for the damage. The duty to make compensation extends to all damages which the animals do to products of the land which have been harvested, though not yet gathered in.

"If the exercise of the sporting rights belonging to the owner is withdrawn from him by law, the person who is by law entitled to exercise the sporting rights has to make compensation for the damage. If the owner of a piece of land over which the sporting rights, on account of the situation of the land, can be exercised only in common with the sporting rights of another piece of land, has leased the sporting rights to the owner of such another piece of land under a usufructuary lease, the latter is responsible for the damage.

"If, for the purpose of a common exercise of the right of sporting, the land-owners of a district have been united by law into an association which is not liable as such, they are responsible for damages in proportion to the size of their landed properties."

847. "In the case of injury to the body or health of another, or in the case of the deprivation of liberty, the injured party may also demand an equitable compensation in money for the damage which is not a pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or an action on it has been commenced."

"A like claim belongs to a woman against whom an immoral crime or offense is committed, or who is induced by fraud, or by threats, or by an abuse of a relation of dependence to permit illicit co-habitation."

The foregoing extracts show the arrangement, scope and general character of the second book and those provisions which appear to be peculiar to this code.

LAW OF THINGS

Third Book. First Section. Possession.

859. "A possessor may forcibly resist unlawful interference. If a movable is taken away from the possessor by unlawful interference, he

may retake it by force from the wrongdoer if he be caught in the act or immediately pursued.

"If a possessor of land is deprived of possession by unlawful interference, he may, immediately upon being dispossessed, recover possession by the expulsion of the wrongdoer."

Second Section. General Provisions Relating to Rights over Land.

873. "For the transfer of ownership of land, or the creation of any right in another over land, or for the transfer of or the creation of a charge upon such right, a real agreement between the person entitled and the other party relating to the change of title and registration of the change of title in the land register are necessary, unless the law provides otherwise.

"Before the registration the parties are bound by the agreement only if the declarations have been judicially or notarially authenticated, or have been made or filed in the land registry office, or if the person entitled has delivered to the other party an authorization for registration conformable with the provisions of the Land Registration Act."

879. "The order of priority among several rights to which land is subject is determined, if the rights have been registered in the same division of the land register, by the order of registration. If the rights have been registered in different divisions, the right registered as of earlier date has priority; rights registered as of the same date have equal rank.

"The registration is conclusive for the order of priority, even though the real agreement necessary according to 873 for the acquisition of the right has not been completed till after the registration. A different arrangement of the order of priority requires registration in the land register."

883. "A caution may be entered in the land register for securing a claim for the concession or release of a right affecting land or affecting a right over land, or for the alteration of the rank or substance of such a right. The registration of a caution is also permissible for securing a future or conditional claim.

"A disposition which is made affecting the land or the right after the registration of the caution is ineffective, in so far as it would defeat or impair the claim. This applies even where the disposition is made by means of compulsory execution or distraint, or by a trustee in bankruptcy.

The rank of the right for the concession of which the claim is made is determined by the date of the registration of the caution."

885. "The registration of a caution is effected by virtue of a provisional decree, or of an authorization by the person whose land or right is affected by the caution. It is not necessary for the issue of the provisional decree that *prima facie* evidence be given that the claim to be secured is likely to be endangered. In the registration reference may be made to the provisional decree or to the authorization for registration for fuller specification of the claim to be secured."

Third Section. Ownership.

First Title. Scope of Ownership.

903. "The owner of a thing may, in so far as the law or the rights of third parties admit, deal with the thing as he pleases and exclude others from any interference with it."

904. "The owner of a thing is not entitled to forbid the interference of another with the thing, if the interference is necessary for averting a present danger and the threatened injury is disproportionately great in comparison to the injury caused to the owner by the interference. The owner may require compensation for the damage caused to him."

905. "The right of the owner of a piece of land extends to the space above the surface and to the substance of the earth beneath the surface. The owner may not, however, forbid interference which takes place at such a height or depth that he has no interest in its prevention."

906. "The owner of a piece of land may not forbid the discharge of gases, vapors, odors, smoke, soot, heat, noise, vibrations and similar interferences proceeding from another piece of land, in so far as the interference does not, or does not essentially, injure the use of his land, or is caused by a use of the other land which is customary according to the local customs for lands in such situation. Discharge by a special conduit is not permitted."

907. "The owner of a piece of land may prevent the construction or erection, on an adjoining piece of land, of structures from which it can be foreseen with certainty that their condition or use will result in an inadmissible interference with his land. If a structure complies with the provisions of the State law which prescribe a specified distance from the boundary or other protective measures, the removal of the structure can be required only if the inadmissible interference actually takes place.

"Trees and shrubs are not structures within the meaning of these provisions."

Second Title. Acquisition and Loss of Ownership of Land.

925. "The real agreement of the alienor and the acquirer necessary according to 873 for the transfer of ownership of land must be declared at the land registry office in the presence of both parties simultaneously.

A conveyance by agreement made subject to any condition or limitation of time is of no effect."

Third Title. Acquisition and Loss of Ownership of Movables.

929. "For the transfer of ownership of a moveable it is necessary that the owner deliver the thing to the acquirer and make a real agreement with him that the ownership shall pass. If the acquirer is in possession of the thing the real agreement as to the passing of ownership is sufficient."

930. "Where the owner is in possession of the thing a real agreement

between him and the acquirer relating to a legal relation whereby the acquirer acquires indirect possession takes the place of delivery."

932. "By an alienation made under 929 the acquirer becomes owner even though the thing does not belong to the alienor, unless he is in bad faith at the time at which according to these provisions he would acquire ownership. In the case provided for by 929 sentence 2, this applies, however, only where the acquirer had acquired possession from the alienor.

"The acquirer is in bad faith if it is known to him, or unknown in consequence of gross negligence, that the thing does not belong to the alienor."

935. "Ownership may not be acquired under 932 or 934 if the thing has been stolen from the owner, or has been lost, or has otherwise become missing. Where the owner was only indirect possessor, the same rule applies if the thing has been missed by the possessor.

"These provisions do not apply to money or instruments to bearer nor to things which are alienated by means of public auction."

937. "A person who has a movable for ten years in his proprietary possession acquires ownership thereof (usucaption).

"Usucaption is excluded if the acquirer was in bad faith at the time of acquiring proprietary possession, or if he subsequently learns that the ownership does not belong to him."

947. "If movables become attached to each other in such manner that they become essential component parts of a single thing, the former owners become co-owners of such thing; their shares are determined in proportion to the value which such movables had at the time of the incorporation. If one of the things is to be regarded as the principal thing, the owner of the principal thing acquires sole ownership."

958. "A person who takes proprietary possession of an ownerless movable acquires ownership of such movable.

"Ownership is not acquired if the appropriation is forbidden by law, or if by taking possession the right of another to appropriate the movable is violated."

961. "If a swarm of bees migrates, they become ownerless, unless the owner pursue them without delay, or gives up the pursuit."

965. "A person who finds a lost thing and takes possession of it shall give notice without delay to the loser, or the owner, or any other person entitled to receive it. If the finder does not know the persons who are entitled to receive it, or if their residence is unknown to him, he shall without delay give notice to the police authority of the finding and of the circumstances which may be material for the discovery of the persons entitled to receive the thing. If the thing is not worth more than three marks, notification is not required."

971. "The finder may demand a reward from the person entitled to receive the thing. The reward amounts to five per cent. of the value of

the thing up to three hundred marks, and one per cent. on value in excess; in the case of animals one per cent. If the thing has a value only for the person entitled to receive it, the reward shall be determined in an equitable manner. The claim is barred if the finder violates the duty of giving notice, or conceals the finding on inquiry being made."

973. "Upon the lapse of one year from the notice of the finding to the police authority the finder acquires ownership of the thing, unless within such period a person entitled to receive it has become known to the finder, or has notified the police authority of his right. Upon the acquisition of ownership all other rights over the thing are extinguished."

Fourth Title. Claims arising from Ownership.

Fifth Title. Co-ownership.

1011. "Every co-owner may enforce as against third parties any claims arising from ownership in respect of the entire thing."

Fourth Section. Heritable Building Rights.

1012. "A piece of land may be charged with a right in such manner that the person in whose favor the right is created has an alienable and heritable right to have a structure upon or beneath the surface of such land."

1014. "The limitation of a heritable building right to a part of a building, e.g. to one particular story, is not permissible."

1016. "A heritable building right is not extinguished by the destruction of the structure."

1017. "The provisions relating to land apply to heritable building rights. . ."

Fifth Section. Servitudes.

First Title. Real Servitudes.

1018. "A piece of land may be charged with a right in favor of the owner for the time being of another piece of land in such manner that the latter may use the land in certain ways, or that certain acts may not be done on the land, or that the exercise of a right is excluded which arises from the ownership of the servient tenement in respect of the other land."

Second Title. Usufruct.

1030. "A thing may be charged with a right in such manner that the person in whose favor the right is created is entitled to draw the emoluments of the thing. A usufruct may be limited by the exclusion of certain classes of emoluments."

Third Title. Limited personal Servitudes.

1090. "A piece of land may be charged with a right in such manner that the person in whose favor the right exists is entitled to use the land in certain ways, or that some other authority belongs to him which can constitute the substance of a real servitude."

1092. "A limited personal servitude is not transferable. The exercise of the servitude can be transferred to another person only if the transfer is authorized."

Sixth Section. Real Right of Preemption.

1094. "A piece of land may be charged with a right in such manner that the person in whose favor the right exists is entitled to preemption as against the owner.

The right of preemption may also be created in favor of the owner for the time being of another piece of land."

Seventh Section. Perpetual Charges on Land.

1105. "A piece of land may be charged with a right in such manner that periodical acts of performance are to be done with the means derived from the land in favor of the person in whose favor the right exists."

"A perpetual charge may also be granted in favor of the owner for the time being of another piece of land."

Eighth Section. Hypotheca—Land Charge—Annuity Charge.

First Title. Hypotheca.

1113. "A piece of land may be charged with a right in such manner that to the person in whose favor the right is created a specified sum of money is to be paid out of the land in satisfaction of a claim belonging to him. A hypotheca may also be granted for a future or a conditional claim."

1115. "In the registration of a hypotheca, the name of the creditor, the amount of the claim, and, if the claim bears interest, the rate of interest, and where other accessory payments are to be made, their amount must be stated in the land register; for the rest reference may be made to the authorization for fuller specification of the claim."

"In the case of the registration of a hypotheca for loan for consumption made by a credit institution whose charter has been made public by the competent authority, a reference to the charter is sufficient for the specification of such accessory payments as are to be made according to the charter in addition to interest."

1116. "A certificate of hypotheca is issued for the hypotheca."

1136. "An agreement is void whereby the owner binds himself to the creditor not to alienate the land nor to subject it to further rights."

Second Title. Land Charge—Annuity Charge.

1191. "A piece of land may be charged in such manner that a specified sum of money is to be paid out of the land to the person in whose favor the charge is made. The charge may also be made in such manner that interest upon the sum of money, as well as other accessory payments, is to be paid out of the land."

1192. "The provisions relating to hypothecas apply *mutatis mutandis* to land charges, except in so far as a contrary intention appears from the fact that a land charge does not presuppose a claim. The provisions relating to interest on a hypothecary claim apply to interest on a land charge."

1199. "A land charge may be granted in such manner that a specified

sum of money is to be paid out of the land at regularly recurring periods. In granting an annuity charge the amount, by payment of which the annuity charge may be redeemed must be specified. The redemption sum must be stated in the land register."

Ninth Section. Pledges of Moveables and of Rights.

First Title. Pledge of Moveables.

1204. "A moveable may for the security of a claim, be charged in such manner that the creditor is entitled to seek satisfaction out of the moveable. A pledge may also be granted as a security for a future or a conditional claim."

1205. "For the grant of a pledge it is necessary that the owner deliver the thing to the creditor and make a real agreement with him to the effect that the pledges shall belong to the creditor. If the creditor is in possession of the thing, a real agreement as to the creation of the pledge is sufficient. The delivery of a thing which is in the indirect possession of the owner may be replaced by the owner transferring the indirect possession to the pledgee and notifying the pledge to the possessor."

1228. "The satisfaction of the pledgee out of the thing pledged is effected by sale. The pledgee is entitled to sell the thing pledged as soon as the claim is due in whole or in part. If the object owed is not money, the sale is permissible only if the claim has been transmuted into a money claim."

1229. "An agreement made before the right to sell has arisen whereby the ownership of the thing is to pass or is to be transferred to the pledgee if satisfaction is not made, or is not made in due time, is void."

1235. "The sale of the thing pledged is to be effected by means of public auction." But if it has an exchange or market value it may be sold at private sale at the current price. A month's warning to the pledgor prior to the sale is required.

1259. "The special provisions of 1260 to 1271 apply to a pledge affecting a ship entered in the ship register."

1260. "For the grant of such a pledge a real agreement between the owner of the ship and the creditor that the pledge shall belong to the creditor, and an entry of the pledge in the ship register, are necessary. . . .

"In the registration must be stated the name of the creditor, the amount in money of the claim, and, if the claim bears interest, the rate of interest. For the detailed description of the claim, reference may be made to the authorization for registration."

1268. "The pledgee may seek satisfaction out of the ship and its accessories only by virtue of an executory title according to the provisions applicable to compulsory execution."

Second Title. Pledge of Rights.

1273. "A right can also be the object of pledge. The provisions relating to pledge of moveables apply *mutatis mutandis* to pledge of rights in so far as a contrary intention does not appear from 1274 to 1296."

1274. "The grant of a pledge of a right is effected according to the provisions applicable to the transfer of rights. If for the transfer of the right the delivery of a thing is necessary, the provisions of 1205, 1206 apply. So long as a right is not transferable, a pledge of the right may not be granted."

FAMILY LAW

First Section. Civil Marriage.

First Title. Betrothal.

1297. "No action can be brought upon a betrothal for the fulfilment of the promise to marry. A promise to pay a penalty in case of non-fulfilment of the promise is void."

1298. "If a betrothed person withdraws from the betrothal, he (or she) shall compensate the other party to the betrothal, the latter's parents, and any third parties who have acted in *loco parentis*, for any damage caused by their having incurred outlay or obligations in expectation of the marriage. He shall also compensate the other party to the betrothal for any damage which the latter suffers through having, in expectation of the marriage, taken other measures affecting his (or her) property or employment. The damage shall be made good only in so far as the incurring of the outlay or obligations and the other measures were reasonable under the circumstances. The duty to make compensation does not arise if a grave reason for the withdrawal exists."

Second Title. Conclusion of Marriage.

1303. "A man may not marry before attaining majority; a woman may not marry before the completion of her sixteenth year of age. Dispensation from this provision may be granted to a woman." The approval of the parent or guardian is required for those lacking disposing capacity or under age."

1310. "A marriage cannot be concluded between relatives by blood in the direct line, nor between brothers and sisters of full blood or half blood, nor between relatives by marriage in the direct line. A marriage cannot be concluded between persons one of whom has had sexual intercourse with parents, grandparents, or descendants of the other. Relationship by blood, within the meaning of these provisions, exists also between an illegitimate child and his descendants on the one side, and the father and his relatives by blood on the other side."

1317. "The marriage is concluded by the parties to the betrothal, personally and simultaneously present, declaring before a registrar their intention to enter into wedlock with each other. The registrar must be ready to receive the declarations. The declarations cannot be made subject to any condition or limitation of time."

Third Title. Void and Voidable Marriages.

1324. "A marriage is void if in the conclusion of the marriage the form prescribed in 1317 has not been observed." But if entered in the

marriage register and followed by cohabitation ten years or three years and until one of them dies it is validated.

A marriage is void if one of the parties was incapable of disposing, married to another, or if they are related within the prohibited degrees.

It may be avoided if procured by mistake of identity, fraud or duress.

Fourth Title. Re-marriage in case of Declaration of Death.

1348. "If one spouse, after the other spouse has been declared dead, concludes a new marriage, the new marriage is not void merely because the spouse declared dead is still alive, unless both spouses at the conclusion of the marriage knew that he (or she) was living at the time of the declaration of death.

"Upon the conclusion of the new marriage the former marriage is dissolved. It remains dissolved even if the declaration of death is revoked in consequence of an action to set it aside."

Fifth Title. Effects of Marriage in General.

1354. "The right to decide in all matters affecting the common conjugal life belongs to the husband; he determines especially the place of abode and the dwelling.

"The wife is not bound to conform to the decision of the husband if the decision appears to be an abuse of his right."

Sixth Title. Matrimonial Regimes.

1363. "By the conclusion of the marriage the property of the wife becomes subject to the management and usufruct by the husband. Contributed property includes also the property which the wife acquires during the marriage."

1365. "The management and usufruct by the husband does not extend to the separate property of the wife."

Separate property includes clothing, ornaments, property acquired from her labor or business, that so declared in the marriage contract, that acquired by succession or legacy.

1389. "The husband shall bear the expenses of the joint household. In so far as the net income of the contributed property is necessary for the maintenance of the husband and of the wife and the descendants of the marriage, she may require him to spend the net income for such maintenance without regard to his other obligations."

1391. "If it is to be apprehended, owing to the conduct of the husband, that the rights of the wife will be infringed in a manner seriously endangering the contributed property, she may require her husband to give security."

1395. "The wife requires the approval of the husband for making any disposition affecting the contributed property."

If the husband consents to her carrying on a separate business further consent to transactions in such business is unnecessary.

1410. "Creditors of the husband may not demand satisfaction out of the contributed property."

1415. "As between the spouses the following are borne by the separate property:

(1) The liabilities of the wife arising from any unlawful act committed by her during the marriage, or arising from any criminal proceedings instituted against her on account of such an act;

(2) The liabilities of the wife arising from any legal relation affecting her separate property, even if they have arisen before the date of the marriage or before the time at which the property became separate property;

(3) The costs of any action to which the wife is a party relating to any of the liabilities specified in (1) and (2).

1427. "The husband shall bear the expenses of the joint household. For defraying the expenses of the joint household the wife shall make a reasonable contribution to her husband out of the income of her property, and the earnings of her work, or of any separate business carried on by her. The husband may claim contribution in respect of past expenses only in so far as such contribution was in arrear after demand made by the husband. This claim of the husband is not transferable."

II.—CONTRACTUAL RÉGIMES

1432. "Both spouses may regulate their property relations by contract, and may also terminate or modify the matrimonial régime even after the date of the marriage."

1434. "A marriage contract must be entered into before a court or a notary in the presence of both parties simultaneously."

1443. "The common property is subject to the management of the husband. The husband is also entitled to take possession of all things forming part of the common property or to dispose of such property, or to bring actions relating to such property in his own name. By the husbands acts of management the wife is personally bound neither to third parties nor to her husband."

1445. "The husband requires the approval of his wife for disposal of any land forming part of the common property, or for incurring an obligation to make such a disposition."

1449. "If the husband disposes of any right forming part of the common property without the necessary consent of his wife, she may enforce such right in Court against third parties without the concurrence of the husband."

1483. "If any descendants of the marriage are living at the time of the death of one of the spouses, the community of goods is continued between the surviving spouse and the descendants of the marriage who would be entitled to inherit in case of statutory succession. The share of the deceased spouse in the common property does not belong to his (or her) estate in this case; for the rest the succession to the spouse takes place according to the general provisions."

"If there are other descendants besides the descendants of the marriage, their rights to inherit and their shares in the estate are determined

in such manner as if the continued community of goods had not been created."

1526. "Separate property of the wife includes that which has been declared to be separate property in the marriage contract, or is acquired by the wife under 1369 or 1370.

The husband does not have separate property.

The same rules which apply to the separate property under the régime of general community of goods apply to the separate property of the wife."

1527. "It is presumed that the property existing at any time is common property."

1529. "The expenses of the joint household are borne by the common property. The common property also bears the charges upon the contributed property of both spouses; the extent of such charges is determined according to the provisions of 1384 to 1387, applicable to the contributed property of the wife under the régime of management and usufruct."

1550. "The contributed property of a spouse is excluded from the common property."

1558. "Entries in the marriage property register shall be made in the District Court in whose district the husband has his domicile."

Paragraphs 1363 to 1563 deal with property rights and pecuniary obligations growing out of the marriage relation. To an American lawyer the subject of the charges against the separate property of the wife, the property contributed by each and the common property appears to be treated in very minute detail and with many very indefinite provisions.

Seventh Title. Divorce.

A marriage may be dissolved on any one of the following grounds
Adultery or any act punishable under 171,175 of the Criminal Code.

An attempt against the complaining party's life.

Wilful desertion for one year.

Grave breach of marital duty by dishonest or immoral conduct or gross ill-treatment.

Insanity continuing for three years without hope of recovery.

Divorce is granted by judicial decree and the petition for it must be filed within six months after the petitioner had knowledge of the ground for it.

Second Section. Relationship.

First Title. General Provisions.

Second Title. Legitimate Descent.

1591. "A child born after the conclusion of a marriage is legitimate, if the wife conceived the child before or during the marriage, and the husband cohabited with the wife within the period of possible conception. The child is not legitimate if it is evidently impossible under the circumstances that the wife has conceived the child by the husband." . . .

1592. "The period of possible conception is the period between the 181st day and the 302nd day, both inclusive, before the day of the birth of the child." . . .

1593. "The illegitimacy of a child born during the marriage or within 302 days after the dissolution of the marriage, may not be set up unless the husband has repudiated the legitimacy, or has died without having lost the right of repudiation."

Third Title. Duty to Furnish Maintenance.

1601. "Persons related by blood in the direct line are bound to furnish maintenance to one another."

1602. "A person is entitled to maintenance only if he is not in a position to maintain himself."

"An unmarried minor child may, even if he has property, claim maintenance from his parents in so far as the income of his property and the earnings of his work are not sufficient for his maintenance."

1606. "Descendants are liable to furnish maintenance before relatives by blood in the ascending line are liable. The descendants' duty to furnish maintenance is determined according to the statutory order of succession and according to their respective shares in the inheritance."

"Among relatives by blood in the ascending line those of nearer degree are liable before those of remoter degree; relatives of the same degree are liable in equal shares. The father is, however liable before the mother; if the mother has the right of usufruct of her child's property she is liable before the father is liable."

Fourth Title. Legal Status of Legitimate Children.

1626. "A child is under parental power so long as he is a minor."

1627. "A father has, by virtue of his parental power, the right and the duty to take care of his child's person and property."

In the management of the child's property the parent is subject to the direction of the Guardianship Court as to matters of importance.

1684. "The parental power belongs to the mother:

(1) If the father has died, or has been declared dead;

(2) If the father has forfeited the parental power and the marriage has been dissolved.

In the case of declaration of death the parental power of the mother begins at the date which is deemed to be the date of death."

Fifth Title. Legal Status of Children Born of Void Marriages.

1699. "A child born of a void marriage who, if the marriage were valid, would have been legitimate, is deemed to be legitimate in so far as both spouses did not know at the time of the marriage that the marriage was void. The provision does not apply if the marriage was void owing to some defect in form, and the marriage has not been entered in the marriage register."

Sixth Title. Legal Status of Illegitimate Children.

1705. "An illegitimate child has the legal status of a legitimate child in respect of his mother and her relatives by blood."

1708. "The father of an illegitimate child is bound to furnish the child, until the completion of his sixteenth year of age, maintenance suitable to the mother's station in life. Maintenance includes all the necessities of life and the expenses of education and of preparation for a profession." . . .

Seventh Title. Legitimation of Illegitimate Children.

1719. "An illegitimate child acquires, by reason of the fact that the father marries the mother, the legal status of a legitimate child from and after the celebration of the marriage."

1723. "An illegitimate child may, upon the application of the father, be declared legitimate by order of the public authority."

1726. "For the declaration of legitimation the approval of the child and, if the child has not completed his twenty-first year of age, the approval of the mother are necessary. If the father is married, he requires also the approval of his wife. . . ."

Eighth Title. Adoption.

1741. "A person who has no legitimate descendants may adopt another by contract with the latter. Such a contract requires the confirmation of the competent Court."

1744. "The adoptor must have completed his fiftieth year of age, and must be at least 18 years older than the adopted child." This requirement is subject to dispensation.

Third Section. Guardianship.

First Title. Guardianship over Minors.

This title contains very full and detailed provisions for the appointment of guardians by the Guardianship Court, the management of the affairs of the ward and the supervision of the Court.

1858. "A family council shall be established by the Guardianship Court, if the father or the legitimate mother of the ward has directed its establishment. . . ."

1860. "A family council consists of the judge of the Guardianship Court as president, and no less than two nor more than six members."

1872. "A family council has the rights and the duties of the Guardianship Court. The duty to conduct its affairs is imposed upon the president. Members of a family council may exercise their functions only in person. They are responsible in the same manner as a judge of a Guardianship Court."

Second Title. Guardianship over Persons of Full Age.

1896. "If a person of full age has been interdicted, a guardian is appointed for him."

1897. "Except so far as a contrary intention appears from 1898 to 1908, the provisions applicable to guardianship over a minor apply to guardianship over a person of full age."

Third Title. Curatorship.

1909. "A curator is appointed for a person under parental power or

guardianship, to take charge of the affairs of which the parent or guardian is prevented from taking charge. . . ."

A curator may also be appointed for a person of full age who is unable to take care of his own affairs.

LAW OF INHERITANCE

Fifth Book. First Section. Order of Succession.

Heirs are divided into the following classes:

First, Descendants of the deceased.

Second, Parents of the deceased and their descendants.

Third, Grandparents of the deceased and their descendants.

Fourth, Great grandparents and their descendants.

Fifth, and subsequent classes, remoter ancestors and their descendants.

Children inherit in equal shares, and the descendants of a deceased child take *per stirpes*. Parents inherit in equal shares. Heirs of the second and third classes take also by representation and on the principle of equality among those standing in the same position.

1930. "A relative by blood is not entitled to inherit so long as there is a relative by blood of a preceding class."

1931. "The surviving spouse of the deceased, in the capacity of statutory heir, is, concurrently with relatives by blood of the first class, entitled to one fourth the inheritance, or, concurrently with relatives by blood of the second class or grandparents, to one half of the inheritance. If there are both grandparents and descendants of the grandparents, the spouse takes also the share in the other half which would devolve upon such descendants are provided for in 1926. If there are neither relatives by blood of the first or second class nor grandparents, the spouse takes the whole inheritance."

Second Section. Legal Status of an Heir.

First Title. Acceptance and Disclaimer of an Inheritance.—Supervision of the Probate Court.

1942. "An inheritance passes to the heir entitled to inherit, subject to his right of disclaiming it. The Treasury may not disclaim an inheritance devolving upon it as statutory heir."

Second Title. Liability of an Heir for the Liabilities of the Estate.

1967. "An heir is liable for the liabilities of the estate.

The liabilities of the estate include not only the debts incurred by the deceased, but also the obligations imposed upon the heir as such, e.g. the obligations arising from any rights to compulsory portions, legacies and testamentary burdens."

1968. "The heir bears the funeral expenses of the deceased suitable to the latter's station in life."

1975. "The liability of an heir for the liabilities of an estate is limited to the estate, if a curatorship over the estate has been established for the

satisfaction of the creditors of the estate (i.e., administration of the estate), or if bankruptcy proceedings have been instituted against the estate."

1994. "The Probate Court shall, upon the application of a creditor of the estate, fix a period for the heir to file the inventory. After the expiration of the period the heir is liable without limitation for the liabilities of the estate unless an inventory has been filed within such period. The applicant shall offer *prima facie* proof of his claim. The validity of the fixing of the period is not affected by the fact that the claim proves to be non-existent."

2007. "If an heir is entitled to several shares in the inheritance, his liability for the liabilities of the estate in respect of each of the shares is determined just as if the shares belonged to different heirs. In cases of the right of accrual and in those provided for by 1935 this applies only where the shares are unequally charged."

Third Title. *Petitio Hereditatis*.

This title deals with the recovery of the estate by the heir from those in possession of it.

Fourth Title. *Plurality of Heirs*.

2032. "If the deceased leaves several heirs, the estate becomes the common property of the heirs."

2033. "Each co-heir may dispose of his share in the estate. A contract whereby a co-heir disposes of his share requires judicial or notarial authentication. A co-heir may not dispose of his share in the individual objects belonging to the estate."

2034. "If a co-heir sells his share to a third party, the other co-heirs are entitled to preemption. The period for the exercise of the right of preemption is three months. The right of preemption passes by inheritance."

2058. "The heirs are liable as joint debtors for the common liabilities of the estate."

Third Section. *Wills*.

First Title. *General Provisions*.

2064. "A person may make a will only in person."

This title deals with the construction to be given to certain gifts, the presumptions attending them and the avoidance of testamentary dispositions.

Second Title. *Appointment of Heirs*.

2087. "If a testator has bequeathed his property or an aliquot part of his property to a beneficiary, the disposition is deemed to be the appointment of an heir even if the beneficiary has not been named as an heir.

"If particular objects only have been given to the beneficiary, it is not to be presumed, in case of doubt, that he is to be an heir, even if he has been named as an heir."

2088. "If a testator has appointed only one heir, and if the appoint-

ment is limited to an aliquot part of the inheritance, the statutory succession takes place in respect of the other parts. The same rule applies, if the testator has appointed several heirs with a limitation of each to an aliquot part, and the parts do not exhaust the whole inheritance."

Third Title. Appointment of Reversionary Heirs.

2100. "A testator may appoint an heir in such manner that the latter does not become an heir until after another person has previously become an heir."

This paragraph is followed by forty-six others dealing in detail with the rights and liabilities of limited and reversionary heirs.

Fourth Title. Legacies.

2147. "An heir or a legatee may be charged with a legacy. Unless the testator has otherwise provided, the heir is deemed to have been charged."

2150. "A legacy given to an heir (a preferential legacy) is deemed to be a legacy even if the heir himself is charged therewith."

2160. "A legacy is inoperative if the legatee was not living at the time of the accrual of the inheritance."

Fifth Title. Testamentary Burdens.

Sixth Title. Executors.

2197. "A testator may by will appoint one or more executors. The testator may appoint a substitutional executor to act in the event of the original appointee failing or ceasing to be an executor before or after acceptance of the office."

2205. "The executor shall administer the estate. He is entitled to take possession of the estate and to dispose of any objects belonging thereto. He is entitled to make gratuitous dispositions only so far as they are made in compliance with a moral duty or the rules of social propriety."

2211. "The heir may not dispose of any object belonging to the estate subject to the administration of the executor. The provisions in favor of those who derive rights from a person without title apply *mutatis mutandis*."

2212. "A right subject to the administration of the executor may be enforced in court only by the executor."

2214. "Creditors of the heir who are not creditors of the estate may not have recourse to objects belonging to the estate subject to the administration of the executor."

Seventh Title. The Making and Revocation of a Will.

2229. "A person who is limited in disposing capacity does not require the consent of his statutory agent for making a will. A minor may not make a will until he has completed his sixteenth year of age. A person who is interdicted on account of feeble-mindedness, prodigality or drunkenness, may not make a will. Such incapacity begins immediately on the presentation of the application, by virtue of which the interdiction takes place."

2231. "A will may generally be made in the following manner:

(1) Before a judge or notary;

(2) By a declaration of the testator, written and signed with his own hand, stating the place where and the date at which it is made."

2233. "In superintending the making of a will, the judge must be attended by a registrar or by two witnesses; the notary must be attended by another notary or by two witnesses."

2238. "The will shall be made in the following manner: The testator either makes an oral declaration of his last will to the judge or notary, or delivers to him a written statement accompanied by an oral declaration that the written statement contains his last will. The written statement may be delivered open or sealed. It may be written by the testator himself or by any other person. A minor or a person who cannot read may make a will only by oral declaration."

2239. "All persons taking part in superintending the making of a will must be present during the whole proceedings."

2240. "A protocol relating to the making of the will must be drawn up in the German language."

2241. "The protocol must contain—

- (1) The name of the place and date of the proceedings;
- (2) The names of the testator and of all persons taking part in the proceedings;
- (3) The declarations of the testator required by 2238, and, where a written statement is delivered, the fact that the written statement has been delivered."

2242. "The protocol must be read out to and ratified by the testator, and signed by him with his own hand. In the protocol the fact that this has been done must be recorded. The protocol should on demand be laid before the testator for his perusal.

"If the testator declares that he cannot write, a record of such declaration in the protocol is substituted for his signature. The protocol must be signed by all the persons taking part in the proceeding."

2253. "A will or any particular dispositions contained therein may be revoked by the testator at any time.

"Interdiction of the testator on account of feeble-mindedness, prodigality, or habitual drunkenness does not prevent the revocation of a will made before the interdiction."

Eighth Title. Joint Wills.

2265. "A joint will may be made only by a married couple."

2272. "A joint will may be withdrawn from official custody only by both spouses in the manner provided for by 2256."

Fourth Section. Contract of Inheritance.

2278. "Each of the parties to a contract of inheritance may make contractual dispositions *mortis causa*.

"Dispositions other than those relating to the institution of an heir, legacies, and testamentary burdens may not be made."

2286. "The right of the testator to dispose of his property by juristic act *inter vivos* is not limited by a contract of inheritance."

2299. "Either of the contracting parties may unilaterally make any disposition in the contract of inheritance which may be made by will. To such a disposition the same applies as if it had been made by will. The disposition may also be revoked by any contract whereby a contractual disposition may be revoked. Where the contract of inheritance is revoked by the exercise of the right of rescission or by contract, the disposition is thereby invalidated, unless the contrary intention of the testator is to be inferred."

Fifth Section. Compulsory Portion.

2303. "If a descendant of a testator is excluded from succession by disposition *mortis causa*, he may demand his compulsory portion from the heir. The compulsory portion is equal to one-half the statutory portion. The same right belongs to the parents and spouse of the testator, if they have been excluded from succession by a disposition *mortis causa*."

2305. "If a share in the inheritance has been left to a compulsory beneficiary which is less than one-half of his statutory portion, the compulsory beneficiary may claim the deficiency from his co-heirs as his compulsory portion."

2333. "A testator may deprive a descendant of his compulsory portion—

- (1) If the descendant makes an attempt against the life of the testator, or of his spouse, or of any of his descendants;
- (2) If the descendant has been guilty of wilful corporal illtreatment of the testator or his spouse; in the case of illtreatment of his spouse, however, only where the descendant is also descended from such spouse;
- (3) If the descendant has been guilty of any crime, or any serious wilful offense against the testator or his spouse;
- (4) If the descendant maliciously commits a breach of his statutory duty to furnish maintenance to the testator;
- (5) If the descendant leads a dishonorable or immoral life contrary to the testator's wishes."

2334. "A testator may deprive his father of his compulsory portion if the latter has been guilty of any of the offenses specified in 2333 (1), (3), (4). The testator has the same right against his mother if she has been guilty of any such offense."

2335. "A testator may deprive his (or her) spouse of his (or her) compulsory portion if the spouse is guilty of an offence by virtue of which the testator is entitled to petition for divorce as provided for in 1565 to 1568."

Sixth Section. Unworthiness to Inherit.

2339. "A person is unworthy to inherit—

- (1) Who has wilfully and unlawfully killed or attempted to kill the testator, or has brought him to a condition in consequence of which the testator has become incapable, down to the date of his death, of making or revoking a disposition *mortis causa*;

- (2) Who has wilfully and unlawfully prevented the testator from making or revoking a disposition *mortis causa*;
- (3) Who has, by fraud or unlawful threats, induced the testator to make or revoke a disposition *mortis causa*;
- (4) Who has, in respect of a disposition *mortis causa* made by the testator, been guilty of any act punishable under the provisions of 267 to 274 of the Criminal Code. . . ."

Seventh Section. Renunciation of Inheritance.

2348. "A contract of renunciation requires judicial or notarial authentication."

Eighth Section. Certificate of Inheritance.

2353. "The Probate Court shall issue to the heir on demand a certificate relating to his right of inheritance, and, where he is entitled only to a share in the inheritance, relating to the value of his share."

2359. "The certificate of inheritance may be issued only if the Probate Court holds that the facts necessary to support the application have been established."

Ninth Section. Purchase of an Inheritance.

2371. "A contract whereby an heir sells the inheritance which has devolved on him, requires judicial or notarial authentication."

* * * * *

In testimony whereof We have signed with Our own hand and have affixed the Imperial Seal.

Given in the New Palace, the 18th day of August, 1896.

WILLIAM,

Prince of Hohenlohe.

On the same day an Introductory Act was also promulgated providing that the Civil Code should take effect on January 1, 1900. And also The Act relating to Alterations in the Act for the Organization of the Judiciary, The Code of Civil Procedure and the Bankruptcy Act; the Act Relating to Compulsory Auction and Compulsory Management; the Land Registration Act, and the Voluntary Jurisdiction Act. This act contains many important provisions concerning the application of the Civil Code to aliens and to the validity of the laws of the States included within the Empire.

MAGNA CHARTA

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou: To the Archbishops Bishops, Abbots, Earls, Barons, Justiciaries, the Foresters, Sheriffs, Governors, Officers, and to all Bailiffs and other faithful subjects, greeting:

Know that we, in the presence of God, and for the health of our soul and the souls of our ancestors and heirs, to the honor of God, and the exaltation of the holy Church, and amendment of our kingdom, by the advice of our venerable fathers, Stephen, Archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William, bishop of London; Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; and Master Pandulph the Pope's sub-deacon and ancient servant brother; Aymeric, master of the temple in England; and the noble persons—William Marechal, Earl of Pembroke, William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arrundel; Alan de Galoway, constable of Scotland; Warin Fitz-Gerald; Peter Fitz-Herbert, and Hubert De Burgh, seneschal of Poictou; Hugo de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip de Albiney, Robert de Roppele, John Marescall, John Fitz-Hugh, and others, our liege men,—have in the first place granted to God and by this our present charter confirmed for us and our heirs forever.

I. The Church of England shall be free and enjoy her whole rights and liberties inviolable. And we will have them to be so observed, which appears from hence; that the freedom of elections, which was reckoned most necessary for the Church of England, of our own free will and pleasure we have granted and confirmed by our charter, and obtained the confirmation from Pope Innocent III, before the discord between us and our barons, which charter we shall observe and do will it to be faithfully observed by our heirs forever.

II. We have also granted to all the freemen of our kingdom, for us and for our heirs forever, all the unwritten liberties to have, and to hold, them and their heirs of us and our heirs.

III. If any of our earls or barons, or others who hold of us in chief by military service, shall die, and at the time of his death his heir is of full age and owes a relief, he shall have his inheritance by the ancient relief, that is to say, the heir or heirs of an earl for a whole earl's barony, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knights fee, by a hundred shillings at most, and he that oweth less shall give less, according to the ancient custom of fees.

IV. If the heir of any such be under age, and shall be in ward, when he comes of age, he shall have his inheritance without relief or fine.

V. The warden of the land of such heir who shall be under age shall take of the land of such heir only reasonable issues, reasonable customs, and reasonable services; and that without destruction and waste of the men or things (upon the estate): and if he commit the guardianship of those lands to the sheriff, or any other, who is answerable to us for the issues of the land, we will compel him to give satisfaction and the land shall be committed to two lawful and discreet tenants of that fee, who shall be answerable for the issues to us or to him whom we shall assign. And if we give or sell the wardship of any such lands to any one, and he shall make destruction or waste upon them, he shall lose the wardship, which shall be committed to two lawful and discreet tenants of that fee, who shall in like manner be answerable to us, as hath been said.

VI. But the warden so long as he has the wardship of the land, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall restore to the heir, when he comes of full age, the whole land stocked with ploughs and carriages, according as the time of wainage shall require and the issues of the land can reasonably bear.

VII. Heirs shall be married without disparagement (so as that before matrimony shall be contracted those who are nearest to the heir in blood shall be made acquainted with it).

VIII. A widow after the death of her husband, shall forthwith and without any difficulty have her marriage and her inheritance; nor shall she give anything for her dower or her marriage or her inheritance which her husband and she held at the day of his death. And she may remain in the capital messuage or mansion house of her husband forty days after his death, within which time her dower shall be assigned.

IX. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband. But yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she holds of another.

X. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattels of the debtor upon the premises sufficient to pay the debt, nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

XI. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt, and if they will they shall have the lands and rents of the debt, or until they shall be satisfied for the debt which they paid for him; unless the principal debtor can show himself acquitted thereof against the said sureties.

XII. If anyone have borrowed anything of the Jews, more or less, and dies before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattels mentioned in the charter or instrument.

XIII. And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessities provided for them according to the tenement of the deceased, and out of the residue the debt shall be paid; saving however the service of the lords. In like manner let it be with the debts due to other persons than the Jews.

XIV. No scutage or aid shall be imposed in our kingdom, unless by the common council of our kingdom, except to redeem our person, and to make our eldest son a knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable aid.

XV. In like manner it shall be concerning the aids of the city of London; and the city of London shall have all of its ancient liberties and free customs, as well by land as by water.

XVI. Furthermore, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customs and shall have the common council of the kingdom concerning the assessment of their aids, except in the three cases aforesaid.

XVII. And for the assessing of scutages we shall cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm, singly by our letters.

XVIII. And furthermore we shall cause to be summoned, in general by our sheriffs and bailiffs, all others who hold of us in chief at a certain day; that is to say, forty days before their meeting, at least, to a certain place; and in all letters of such summons we will declare the cause of the summons.

XIX. And summons being thus made, the business shall proceed, on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

XX. We will not for the future grant to anyone that he may take aid of his own free tenants, unless to redeem his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall only be paid a reasonable aid.

XXI. No man shall be distrained to perform more service for a knights fee or other free tenement, than is due from thence.

XXII. Common pleas shall not follow our court, but shall be holden in some certain place. Trials upon the writs of *novel disseisin*, and of *mort d'ancestor*, and of *darrein presentment* shall be taken, but in their proper counties, and after this manner; we, or (if we shall be out of the realm) our chief justiciary, shall send two justiciaries through every county four times a year, who, with the four knights chosen out of every shire

by the people, shall hold the said assizes in the county, on the day and at the place appointed.

XXIII. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them as is necessary, according as there is more or less business.

XXIV. A freeman shall not be amerced for a small fault; but according to the degree of the fault, and for a great crime in proportion to the heinousness of it, saving to him his contenement, and after the same manner a merchant, saving to him his merchandise.

XXV. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy. And none of the aforesaid ameracements shall be assessed but by the oath of honest men of the neighborhood.

XXVI. Earls and barons shall not be amerced but by their peers, and according to the quality of the offense.

XXVII. No ecclesiastical person shall be amerced but according to the proportion aforesaid, and not according to the value of his ecclesiastical benefice.

XXVIII. Neither a town nor any person shall be distrained to make bridges over rivers unless anciently and of right they are bound to do it.

XXIX. No sheriff, constable, coroner, or other our bailiffs shall hold pleas of the crown.

XXX. All counties, hundreds, wapentakes, and tithings shall stand at the old rents without any increase except in our demesne lands.

XXXI. If any one that holds of us a lay fee dies, and the sheriff or our bailiff show our letters patent of summons concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased, found upon his lay fee, to the value of the debt, by the view of lawful men so as nothing be removed until our whole debt be paid, and the rest shall be left to the executors to fulfill the will of the deceased. And if there be nothing due from him to us, all the chattels shall remain to the deceased; saving to his wife and children their reasonable shares.

XXXII. If any freeman die intestate his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church, saving to everyone his debts which the deceased owed.

XXXIII. No constable or bailiff of ours shall take corn or other chattels of any man unless he presently give him money for it or has respite of payment from the seller.

XXXIV. No constable shall distrain any knight to give money for castle guard, if he himself shall do it in his own person or by another able man, in case he shall be hindered by any reasonable cause.

XXXV. And if we shall lead him or if we shall send him into the army he shall be free from castle guard for the time he shall be in the army, by our command.

XXXVI. No sheriff or bailiff of ours or any other shall take horses or carts of any for cartage.

XXXVII. Neither shall we or our officers take any man's timber for our castles or other uses, unless by consent of the owner of the timber.

XXXVIII. We will retain the lands of those convicted of felony but one year and a day, and then they shall be delivered to the lord of the fee.

XXXIX. All weirs for the time to come shall be demolished in the rivers of Thames and Medway and throughout all England except upon the sea coast.

XL. The writ which is called *praecipe* for the future shall not be granted to any one of any tenement whereby a freeman may lose his cause.

XLI. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn; that is to say, the London quarter and one breadth of dyed cloth and russets and haberjects; that is to say, to ells within the testa. And the weights shall be as the measures.

XLII. From henceforward nothing shall be given or taken for a writ of inquisition from him that desires an inquisition of life or limbs but shall be granted gratis and not denied.

XLIII. If any one holds of us by fee farm or socage or burgage, and holds lands of another by military service, we will not have the wardship of the heir or land which belongs to another man's fee by reason of what he holds of us by fee farm, socage or burgage. Nor will we have the wardship of the fee farm, socage or burgage, unless the fee farm is bound to perform military service.

XLIV. We will not have the wardship of an heir, nor of any land which he holds of another by military service, by reason of any petit sergeanty he holds of us, as by the service of giving us daggers, arrows or the like.

XLV. No bailiff for the future shall put any man to his law upon his single accusation, without credible witnesses produced to prove it.

XLVI. No freeman shall be taken or imprisoned, or disseized or outlawed, or banished, or in any wise destroyed, nor will we pass upon him or commit him to prison unless by the legal judgment of his peers or by the law of the land.

XLVII. We will sell to no man, we will deny to no man, nor defer right and justice.

XLVIII. All merchants shall have safe and secure conduct to go out of and to come into England, and to stay there; and to pass as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil tolls except in time of war, or when they shall be of any nation at war with us.

XLIX. And if there shall be found any such in our land, in the beginning of a war, they shall be attached without damage to their bodies or goods, until it may be known to us, or our chief justiciary, how our merchants be treated in the nation at war with us, and if ours be safe there they shall be safe in our land.

L. It shall be lawful for the time to come for anyone to go out of our kingdom and return safely by land or water, saving his allegiance to us, unless in time of war by some short space for the common benefit of the kingdom; except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

LI. If any man hold of any escheat, as of the manor of Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands, and are baronies, and dies, his heirs shall not give any other relief or perform any other service to us than he would to the baron if the barony were in possession of the baron; we will hold it after the same manner the baron held it.

LII. Those men who dwell without the forest from henceforth shall not come before our justiciaries of the forest upon summons, but such as are impleaded or are pledges for any that were attached for something concerning the forest.

LIII. We will not make any justiciaries, constables, sheriffs, or bailiffs, but what are knowing in the law of the realm and are disposed duly to observe it.

LIV. All barons who are founders of abbeys and have charters of the king of England for the advowson, or are entitled to it by ancient tenure, may have the custody of these when void, as they ought to have.

LV. All woods that have been taken into the forests, in our own time shall forthwith be laid out again, and the like shall be done with the rivers that have been taken and fenced in by us, during our reign.

LVI. All evil customs concerning forests, warrens, and foresters, warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into, in each county, by twelve knights of the same shire, chosen by the most creditable persons in the same county and upon oath, and within forty days after the said inquest, be utterly demolished so as never to be restored.

LVII. We will immediately give up all hostages and engagements delivered unto us, by our English subjects, as securities for their keeping the peace and yielding us faithful service.

LVIII. We will entirely remove from our baliwicks the relations of Gerard de Athyes, so as that for the future they shall have no baliwick in England. We will also remove Engelard de Cygony, Andrew, Peter and Gyon from the chancery, Gyon de Cygony, Geoffrey de Martyn and his brothers and his nephew, Geoffrey, and their whole retinue.

LIX. And as soon as peace is restored we will send out of the kingdom all foreign soldiers, crossbowmen and stipendiaries who are come with horses and arms to the injury of our peace.

LX. If any one has been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or rights we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five and twenty barons hereafter mentioned for the preservation of the peace.

LXI. As to all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry, our father, or our brother, King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite, till the term usually allowed the croises; excepting those things about which there is a suit depending, or whereof an inquest hath been made by our order before we undertook the crusade. But when we return from our pilgrimage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXII. The same respite we shall have for disforesting the forest which Henry, our father, or our brother Richard, have afforested; and for the wardship of the lands which are in another's fee, in the same manner as we have heretofore enjoyed those wardships, by reason of a fee held of us by knight service; and for the abbeys founded in any other fee than our own, in which the lord of the fee claims a right. And when we return from our pilgrimage, or if we should not perform it, we will immediately do justice to all the complaints in this behalf.

LXIII. No man shall be taken or imprisoned upon the appeal of a woman for the death of any other man than her husband.

LXIV. All unjust and illegal fines and all amercements imposed unjustly and contrary to the law of the land shall be entirely forgiven; or else be left to the decision of the five and twenty barons, hereafter mentioned, for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him. But so that if one or more of the aforesaid five and twenty barons be plaintiffs in the same cause, they shall be set aside, as to what concerns this particular affair, and others be chosen in their room, out of the said five and twenty, and sworn by the rest to decide that matter.

LXV. If we have disseized or dispossessed the Welsh of any lands, liberties, or other things without the legal judgment of their peers, they shall immediately be restored to them. And if any dispute arise upon this head, the matter shall be determined in the *marches* by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales according to the law of Wales; for a tenement of the marches according to the law of the marches. The same shall the Welsh do to us and our subjects.

LXVI. As for all those things of which any Welsh man hath, without the legal judgment of his peers, been disseized or deprived by King Henry our father, or our brother King Richard; and which we either have in our hands or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the croises; excepting those things about which a suit is depending, or

whereof an inquest has been made by our order, before we undertook the crusade. But when we return, or if we stay at home and do not perform our pilgrimage, we will immediately do them full justice according to the law of the Welsh and of the parts aforementioned.

LXVII. We will without delay dismiss the son of Llewelin and all the Welsh hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVIII. We shall treat with Alexander, king of the Scots, concerning the restoring of his sisters and hostages and rights and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the engagements which his father, William, late king of Scots, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

LXIX. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as it belongs to us towards our people, all our subjects, as well clergy as laity, shall observe, as far as they are concerned towards their dependents.

LXX. And whereas for the honor of God and the amendment of our kingdom and for quieting the discord that has arisen between us and our barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security; namely, that the barons may choose five and twenty barons of the kingdom, whom they think convenient, who shall take care with all their might to hold and observe and cause to be observed the peace and liberties we have granted them, and by this our present charter confirmed. So as that if we, our justiciary, our bailiffs or any of our officers, shall, in any case, fail in the performance of them towards any person, or shall break through any of these articles of peace and security, and the offense is notified to four barons chosen out of the five and twenty aforementioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the realm, if it is not redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary if we should be out of the realm, the four barons aforesaid shall lay the case before the rest of the five and twenty barons, and the said five and twenty barons, together with the community of the whole kingdom, shall distrain and distress us all the ways possible; namely, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person and the persons of our queen and children. And when it is redressed they shall obey us as before.

LXXI. And any person whatsoever in the kingdom may swear that he will obey the orders of the five and twenty barons aforesaid in the execution of the premises and that he will distress us jointly with them

to the utmost of his power; and we give public and free liberty to any one that will swear to them and never shall hinder any person from taking the same oath.

LXXII. As for those, our subjects, who will not of their own accord swear to join the five and twenty barons in distraining and distressing us, we will issue our order to make them take the same oath as aforesaid.

LXXIII. And if any one of the five and twenty barons dies or goes out of the kingdom or is hindered any other way from putting the things aforesaid in execution, the rest of the said five and twenty barons may choose another in his room in their discretion, who shall be sworn in like manner as the rest.

LXXIV. In all things that are committed to the charge of these five and twenty barons, if when they are all assembled together they shall happen to disagree about any matter, or some of them summoned will not or cannot come, whatever is agreed upon or enjoined by the major part of those who are present shall be reputed as firm and valid as if all the five and twenty had given their consent, and the aforesaid five and twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed.

LXXV. And we will not by ourselves or others, procure anything whereby any of these concessions and liberties be revoked or lessened, and if any such thing be obtained, let it be null and void; neither shall we ever make use of it either by ourselves or any other.

LXXVI. And all the ill will, anger, and malice that hath arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive. Moreover all trespasses occasioned by the said dissension from Easter in the sixteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, clergy as well as laity, and so far as in us lies do fully forgive.

LXXVII. We have moreover granted them our letters patent, testimonial of Stephen lord archbishop of Canterbury, Henry lord archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph for the security of the concessions aforesaid.

LXXVIII. Wherefore, we will, and firmly enjoin, that the church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peacefully, freely and quietly, fully and wholly, to themselves and their heirs, in all things and places forever, as is aforesaid.

LXXIX. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Running Mead between Windelfore and Stanes, the fifteenth day of June, the seventeenth year of our reign.

THE CONSTITUTION OF CZECHOSLOVAKIA

A constitution for the Czechoslovak Republic was adopted by the Constituent Assembly at Prague on February 29, 1920, and approved by Provisional President Masaryk on March 5. The general framework of the government which it establishes is similar to that of other modern republics, but it contains many provisions peculiar to itself. While governmental powers are distributed to legislative, executive and judicial departments, the dividing lines between them are not so sharply drawn as in the Constitution of the United States, nor is it attempted to make such a clear distinction between constitutional and statutory law as we maintain. The Preamble with which it begins expresses familiar purposes and is as follows:

"We, the Czechoslovak Nation, in order to form a more perfect union of the nation, establish justice and order in the republic, insure tranquil development of the Czechoslovak homeland, promote the general welfare of all the citizens of this State and secure the blessings of liberty to future generations, have adopted in our National Assembly on the 29th day of February, 1920, a Constitution for the Czechoslovak Republic, the text of which follows. On this occasion, we, the Czechoslovak Nation, declare that we shall endeavor to have this Constitution and all laws of our land carried out in the spirit of our history and also in the spirit of modern principles contained in the word self-determination; for we desire to join the society of nations as an enlightened, peaceful, democratic and progressive member."

Following this are what are termed "Enabling Provisions," the first three of which are copied below. The others are temporary in character and relate to the taking effect of the Constitution and the organization of the government under it.

"I. Laws in conflict with the Constitution, the fundamental laws which are a part of it, and laws which may supplement or amend it, are void.

The Constitution and the fundamental laws which are a part of it may be changed or supplemented only by laws designated as constitutional laws.

"II. The Constitutional Court decides whether laws of the Czechoslovak Republic and laws of the Diet of Carpathian Russia comply with Article I.

"III. The Constitutional Court consists of seven members, The Supreme Administrative Court and the Supreme Court each designate two members. The remaining two members, together with the President of the court, are appointed by the President of the republic.

Regulation of the manner in which the two above-mentioned courts

select members of the Constitutional Court, its functioning, rules of procedure and effects of its judgments are determined by law."

Next come what are termed "General Provisions" from which the following are quoted or summarized:

"1. The people are the only source of all state authority in the Czechoslovak Republic.

The Constitution determines through what organs the sovereign people adopt laws, carry them out and find justice. The Constitution also sets the limits which these organs may not exceed, so that the constitutionally guaranteed rights of citizens may be protected.

"2. The Czechoslovak State is a democratic republic, at the head of which is an elected President.

"3. The territory of the Czechoslovak Republic forms a unitary and indivisible whole, the frontiers of which may be changed only by fundamental law.

An indivisible part of this whole, * * * is the autonomous territory of Carpathian Russia. * * * Carpathian Russia has its own Diet, which elects its own officers."

It has a Governor appointed by the President of the Republic on the nomination of the Ministry, and laws passed by its Diet are signed by the President of the Republic and the Governor and proclaimed in a separate series. It has representation in the National Assembly. "Citizenship of the Czechoslovak Republic is one and unitary." The capital is Prague and the colors of the Republic are white, red and blue.

The next heading is "Legislative Authority."

"6. Legislative authority for the entire territory of the Czechoslovak Republic is exercised by the National Assembly, which consists of two houses: Chamber of Deputies and Senate."

Both houses meet in regular session twice a year on the call of the President, the sessions commencing in March and October. Legislative and administrative power of the land Diets is abolished. Laws of the National Assembly apply to the whole territory of the Republic, unless otherwise provided.

"8. The Chamber of Deputies consists of 300 members, elected by general, equal, direct and secret franchise in accordance with the principle of proportionate representation. Elections take place on Sundays."

The Senate consists of 150 members elected in the same manner. All citizens, without distinction of sex, 21 years of age, have the right to vote for Deputies, and 26 years of age for Senators. All citizens 30 years of age are eligible as Deputies and 45 as Senators. Senators are elected for terms of eight years. Contested elections of members are passed upon by the electoral court. Employees of the state and university professors who are elected to the Assembly are entitled to leave of absence and continuance of their regular salaries during their terms. Members

of the Assembly, except the Ministers, may receive a salaried state appointment only after the expiration of one year from the end of their terms. Members of county assemblies, county and district chiefs and judges of the Constitutional and Electoral Courts may not sit in the Assembly. In lieu of an oath of office members of the Assembly make the following pledge; "I promise that I will be faithful to the Czechoslovak Republic, that I will observe the laws and execute my trust according to my best knowledge and conscience." Members are accountable only to the House of which they are members for what they do or say in the House, but are subject to arrest for crime. They may only be detained fourteen days without the consent of the House. The President may call special sessions of the Assembly, and must do so on demand of a majority of the members of either House to meet within fourteen days. The President may dissolve the houses but not within the last six months of his term. New elections take place within sixty days. Subject to certain exceptions one-third the membership of either house is a quorum. Declaration of war, amendment of the Constitution and fundamental laws require the affirmative vote of three-fifths of all members of both houses. The Chamber of Deputies may impeach the President or a member of the Government, (Ministry), by a two-thirds majority of two-thirds the membership. Trial is by the Senate. Each House elects its own President and makes its own rules. "Ministers may participate at any time in the meetings of either House and of all committees. They shall be given the floor whenever they desire to speak." "At the request of either House or its committee the Minister shall attend its meetings." Bills may be submitted by the Government or by either House. The Senate shall take action on a bill passed by the Deputies within six weeks; on financial and army bills within three months. If the second House takes no action within the time limit, it is considered an approval of the bill.

"44. A measure passed by the Chamber of Deputies shall become law in spite of the dissent of the Senate if the Chamber of Deputies by a vote of the majority of the entire membership reaffirms its original vote. If the Senate rejects by a three-fourths majority of the entire membership a bill which was passed by the Chamber of Deputies the bill becomes law only if repassed by the Chamber of Deputies by a majority of three-fifths of the entire membership. Bills which thus fail cannot be resubmitted in either House before the expiration of one year. Amendment of a bill passed by one House in the other House is equivalent to rejection."

"46. If the National Assembly rejects a Government bill, the Government may order a popular vote to be taken on the question whether the bill shall become law. Such a decision of the Government must be unanimous. * * *

Popular vote does not apply to governmental proposals changing or amending the Constitution and the fundamental laws which are a part of it."

The President may veto bills passed by the Assembly, but they become laws if reaffirmed by a majority of the entire membership of both Houses, or if three-fifths of the entire number of Deputies vote for it.

"50. Every law must state which member of the Government is charged with its execution."

"52. Each House has the right to interpellate the President and members of the Government on all matters within their jurisdiction, inquire into administrative acts of the Government, appoint committees to which the Ministers shall submit information, adopt addresses and resolutions.

The President and members of the Government shall answer the interpellations of the members of the houses."

"54. In the period between the dissolution of either House or the expiration of its term and the next convening of both houses, and also during the time when the session of the two houses is prorogued or closed, a commission of twenty-four members may enact urgent measures which have the force of law. The Chamber of Deputies elects sixteen members with sixteen alternates, and the Senate elects eight members and eight alternates for the term of one year. Each alternate takes the place of a definite member."

Detailed provisions are made for the organization of the commission and restricting its powers. It cannot elect a President of the Republic, amend fundamental laws, or declare war. Its acts are without force unless signed by the President, and its measures which are not approved by both Houses within two months after their convening become void.

GOVERNING AND EXECUTIVE POWER.

The President is elected by the Assembly and must be a citizen 35 years of age.

"57. Election is held in the presence of the majority of the total membership of both houses, and a vote of three-fifths of those present is necessary. If two ballots result in no choice, the next balloting is limited to the highest candidates; he who receives a plurality of votes is elected. In case of tie the decision is made by lot. Details are governed by law."

The president's term is seven years and commences when he makes the promise before the National Assembly "upon his honor and conscience that he will study the welfare of the Republic and the people and that he will observe constitutional and other laws." No one may be elected for more than two successive terms. If he dies or resigns, his successor is elected by the Assembly for a term of seven years. Provision is made for the conduct of the government by the Ministry in case of the temporary incapacity of the president.

The President negotiates treaties, receives and accredits diplomatic representatives, proclaims war after the consent of the Assembly, convenes, prorogues and dissolves the Assembly, vetoes or signs laws, gives written or oral information to the Assembly, and recommends measures for its

consideration, appoints and dismisses Ministers and determines their number, appoints professors of universities and all judges, civil officials and army officers of the sixth or higher rank, is Commander in Chief of all armed forces and grants pardons. All other executive power is vested in the Government.

"66. The President of the Republic is not responsible for the execution of his office. For his utterances connected with the office of the President, the Government is responsible."

"67. He may be criminally prosecuted only for high treason before the Senate upon impeachment by the Chamber of Deputies. The punishment may extend only to the loss of his office and disqualification ever to hold it again."

"68. Every act of the President in the exercise of his governing or executive power is valid only when countersigned by a responsible member of the Government."

"70. The President and members of the Government (Ministers) are appointed and dismissed by the President of the republic."

"74. No member of the Government may sit on the Board of Directors or act as representative of a stock company or firm which is engaged in business for profit."

The Government is responsible to the Chamber of Deputies and a vote showing lack of confidence calls for the resignation of the Government. The President and members of the Government are liable to impeachment by the Chamber of Deputies for violations of law or gross negligence and tried before the Senate.

"80. The Government acts as a college which is competent to take action only in the presence of the President or acting President and a majority of the Ministers."

"84. Every Government ordinance shall be signed by the President of the Government or the acting President, and also by ministers charged with its execution and in no case less than half the ministers."

Judicial protection against administrative organs is given by the Administrative Court in accordance with the laws and ordinances relating to their powers and duties.

JUDICIAL POWER

"94. The judicial power is exercised by State courts; the law prescribes their organization, their jurisdiction and their procedure.

No one may be sent before any other judge but the one who has jurisdiction by law.

Only in criminal matters extraordinary courts may be introduced and then in cases prescribed by law in advance and for a limited period."

For the entire territory of the Republic there shall be one Supreme Court. Inferior civil, criminal, military and arbitration courts exercise judicial power pursuant to law. The right of trial by jury is not absolute but subject to regulation by law.

Judges are required to take an oath of office, instead of a pledge as required of the President and members of the Assembly. They are "appointed permanently" and may not be transferred or removed against their will, except in case of reorganization of the courts. Sessions of court are oral and public, except in cases enumerated by law.

"102. Judges in passing upon a legal question may examine the validity of an ordinance; as to law they may only inquire whether it was properly promulgated."

The President of the republic has power to declare amnesty, grant pardons, commute punishments and restore civil rights, except in cases of impeachment of members of the Government.

V. RIGHTS AND PRIVILEGES AS WELL AS DUTIES OF CITIZENS.

Privileges due to sex, birth and calling are not recognized. All inhabitants enjoy equally full protection of race or religion. Personal liberty, subject to law, is guaranteed. Every citizen may settle anywhere in the Republic and engage in any lawful occupation. Private ownership may only be restricted by law and expropriation made with compensation except as specifically provided by law. The right to emigrate, the imposition of taxes and punishments and the inviolability of the home are regulated by law. Liberty of the press and the right of peaceful assembly are guaranteed.

"114. The right to associate for the protection and improvement of conditions of employment and economic interests is guaranteed."

The right of petition is inherent, secrecy of the mails is guaranteed and every person may, within the limits of law, express his opinion by word, writing, press, picture, &c.

"119. Public instruction shall be so conducted as not to be in conflict with the results of scientific investigation."

"120. Establishment of private schools is permitted only within the limits of laws. The State administration shall have the supreme conduct and oversight of all instruction and education."

"121. Liberty of conscience and profession is guaranteed."

"125. The marriage relation, family and motherhood, are under the special protection of the laws."

"126. Every physically fit citizen of the Czechoslovak Republic shall submit to military training and obey the call to defend the State."

VI. PROTECTION OF NATIONAL, RELIGIOUS AND RACIAL MINORITIES

"127. All citizens of the Czechoslovak Republic are fully equal before the law and enjoy civil and political rights, regardless of race, language or religion. * * *

The remainder of this and the succeeding sections are elaborations of the principles declared in the part above quoted and designed to secure to the citizens of each race, language and religious equality of opportunity

and treatment with reference to public employment, education and choice of language.

The word President in the foregoing summary means President of the Republic unless otherwise indicated. There is, besides the President of the Republic, a President of the Government (Ministry), and a President of the House of Deputies and of the Senate. The declaration "details are regulated by law" and other expressions of similar import follow many of the sections and leave a large measure of discretion to the Assembly in many important matters. The spirit of the Constitution is thoroughly democratic, not communistic.¹

CONSTITUTION OF POLAND

As one of the results of the Great War national life was restored to Poland with boundaries indicated by the Versailles Treaty. The Polish Constituent Assembly finally adopted the Constitution of the Republic of Poland at Warsaw on March 17, 1921. It begins with a prologue and is divided into five Sections containing 126 Articles.

"SECTION I.—THE REPUBLIC

"Article 1. The Polish State is a republic.

"Article 2. Sovereignty in the Republic of Poland belongs to the nation. The legislative organs of the nation are: in the domain of legislation, the Sejm and the Senate; in the domain of executive power, the President of the republic, jointly with the responsible Ministers; in the domain of the administration of justice, independent courts."

SECTION II.—LEGISLATIVE POWERS

"Article 3. The domain of State legislation comprises the establishment of all public and private laws and the manner of their execution.

There can be no statute without the consent of the Sejm, expressed in a manner conforming to standing orders.

A statute voted by the Sejm comes into force at the time determined in the statute itself.

The Republic of Poland, basing its organization on the principle of broad territorial self-government, will delegate to the bodies representing this self-government the proper domain of legislation, especially in administrative, cultural and economic fields, to be defined more fully by statutes of the State.

Ordinances by public authorities, from which result rights or duties of citizens, have binding force only if issued by the authority of a statute and with a specific reference to the same."

It is then provided that the annual budget, the draft of recruits, State

¹ Current History, Vol. XII, No. 4, p. 727.

loans, disposition of property of the State, imposition of taxes and public dues, the determination of customs duties and monopolies, the establishment of the monetary system and the taking over by the State of a financial guarantee can take place only by the authority of a statute.

"Article 9. The control of the whole State Administration as regards finances; the examination of the accounts of the State; The annual submission to the Sejm of its motion for the granting or refusing of its absolutorium to the Government, are in the hands of the Supreme Board of Control, which is organized on the basis of collegiality and judicial independence of its members, the latter being removable only by a vote of the Sejm representing a majority of three-fifths of those actually voting. The organization of the Supreme Board of Control and its methods of procedure will be defined in detail by a special statute.

The President of the Supreme Board of Control enjoys a position equal to that of a Minister, but is not a member of the Council of Ministers and is directly responsible to the Sejm for the exercise of his office and for the officials who are his subordinates."

"Article 10. Measures can originate either with the Government or with the Sejm. Motions and bills which involve expenditure from the State Treasury must state the manner of their raising and expenditure."

"Article 11. The Sejm is composed of deputies elected for a term of five years, to be counted from the day of the opening of the Sejm, by secret, direct, equal and proportional voting."

All citizens 21 years old without distinction of sex, not in active service in the army or deprived of civil rights are entitled to vote and if 25 years old to be elected to the Sejm, even though in the army.

"Article 15. Administrative, revenue and judicial officials of the State may not be elected in the district in which they are performing their official duties. This rule does not apply to officials employed in the Central Departments."

"Article 16. State and self-government employees obtain leave of absence at the moment of being elected Deputies. This rule does not apply to Ministers, Under Secretaries of State and Professors in academic schools. The years spent in the exercise of the duties of a Deputy are considered as years of service."

"Article 17. A Deputy loses his seat on being appointed to a paid office of the State. This rule does not apply to appointment as Minister, Under Secretary of State or Professor in an academic school."

"Article 19. The validity of unopposed elections is verified by the Sejm. The validity of opposed elections is decided upon by the Supreme Court."

Deputies make a vow to the Marshal and are not responsible for their conduct as Deputies otherwise than to the Sejm. For violation of the rights of third persons they may be made to answer in court if the Sejm

consents. If arrested for a crime, a Deputy must be liberated on demand of the Marshal. Deputies are forbidden to deal in public property or contract for supplies and may not be the responsible editors of a periodical publication.

"Article 24. The Deputies receive compensation, the amount of which is determined by the standing orders, and are entitled to the free use of the State means of communication for traveling over the whole territory of the republic."

The President convokes, opens, adjourns and closes the Sejm and Senate at least annually and in special session at his discretion or on request of one-third of the Deputies. He may dissolve them with the consent of three-fifths of the Senate or the Sejm may do so by two-thirds of those voting. Elections take place within forty days after dissolution. The Sejm elects from its members the Marshal, his deputies, the secretaries and committees, who hold over after dissolution till their successors are elected. Meetings of the Sejm are public, unless made secret by vote. Except in special cases for which other provision is made a majority vote in the presence of one-third the total membership is valid. The Deputies may interpellate the Government or any Minister, who must answer to the Sejm.

"Article 35. Every bill passed by the Sejm will be submitted to the Senate for consideration. If the Senate within thirty days from the day on which a passed bill has been delivered to it, does not raise any objections to the bill, the President of the republic will direct the publication of the statute. Upon the motion of the Senate, the President of the republic may direct the publication of the statute before the lapse of the thirty days.

If the Senate decides to alter or reject a bill passed by the Sejm, it must announce this to the Sejm within the aforesaid thirty days and must return the bill to the Sejm with the proposed changes within the following thirty days.

If the Sejm votes by an ordinary majority, or by a majority of eleven twentieths of those voting, the changes proposed by the Senate, the President of the Republic will direct the publication of the statute in the wording determined by the second vote of the Sejm."

Each voyevodship is entitled to elect one-fourth as many Senators as it has members of the Sejm. The right to vote is restricted to electors thirty years old and eligibility to citizens forty years old. The term of the Senate begins and ends with that of the Sejm.

SECTION III. EXECUTIVE POWER

"Article 39. The president of the republic is elected for seven years by the absolute majority of the votes of the Sejm and the Senate united in National Assembly. The National Assembly is convoked by the Presi-

dent of the republic in the last three months of his seven years' term of office. If the convocation has not taken place thirty days before the end of the seven years' term, the Sejm and the Senate, upon the invitation of the Marshal of the Sejm and under his Chairmanship, unite automatically in National Assembly."

In case of death or disability of the President the Marshal of the Sejm acts as his Deputy. If the office of President becomes vacant the National Assembly elects his successor. If the President fails to perform the duties of his office, the Sejm may declare the office vacant by a majority of three-fifths in the presence of half the total number of Deputies.

"Article 43. The President of the Republic exercises the executive power through Ministers responsible to the Sejm and through officials subordinated to the Ministers.

Every official of the republic must be subordinate to a Minister, who is responsible to the Sejm for the former's actions.

The President of the Council of Ministers countersigns the appointment of officials of the civil Cabinet of the President of the republic, and is responsible for their actions to the Sejm."

"Article 44. The President of the republic signs the statutes jointly with the competent Ministers, and directs the publication of the statutes in the Journal of Laws of the republic.

The President of the republic has the right to issue, for the purpose of executing the statutes and with reference to the statutory authorization, executive ordinances, directions, orders and prohibitions, and to insure their execution by the use of force.

The Ministers and the authorities subordinate to them have the same right in their respective fields of jurisdiction.

Every governmental act of the President of the republic requires for its validity the signature of the President of the Council of Ministers and of the competent Minister, who, by countersigning the act, assumes the responsibility therefor."

"Article 45. The President of the republic appoints and recalls the President of the Council of Ministers; on the latter's motion he appoints and recalls Ministers, and on the motion of the Council of Ministers makes appointments to the civil and military offices reserved by statutes."

The President is the head of the military forces but cannot command in time of war. He appoints the Commander in Chief on motion of the Council of Ministers presented by the Minister of Military Affairs, who is responsible to the Sejm. The President has the right to reprieve and mitigate punishment, but not of impeached Ministers. Amnesty may be granted only by statute. He receives ambassadors, makes treaties and presents them to the Sejm. Those relating to commerce and customs, which impose permanent financial burdens on the State, contain legal rules binding on the citizens, change frontiers or form alliances, require

the consent of the Sejm. He may declare war and conclude peace only after obtaining the consent of the Sejm. He is subject to impeachment by the Sejm for betraying the country, violating the Constitution or criminal offenses. The impeachment is heard and sentence given by the Court of State. Immediately on impeachment he is suspended from office. Before assuming office he is required to take a long oath in the National Assembly, the form of which is prescribed in the Constitution. The Council of Ministers bears the responsibility of the government, and each Minister is responsible for his department. The Ministers are responsible for the acts of the President as well as their own and are required to resign on request of a majority of the Sejm. Ministers are subject to impeachment and trial in the same manner as the President.

"Article 60. The Ministers and officials delegated by them, have the right to take part in the meetings of the Sejm, and to speak out of the turn of those figuring on the list of speakers; they may take part in the vote if they are Deputies."

"Article 61. The Ministers may not hold any office or participate in the governing or controlling bodies of societies and institutions which work for profit."

"Article 64. The Court of State is composed of the First President of the Supreme Court as Chairman, and of twelve members, eight of whom are elected by the Sejm and four by the Senate from outside their own membership.

To membership in the Court of State are eligible persons who do not hold any State office and are in full possession of civil rights.

The election of the members of the Court of State is carried out by the Sejm and the Senate immediately upon the election of their officers for the whole term of the Sejm.'

The State is divided into Voyevodships, districts, and urban and rural communes.

"Article 68. A special statute will create, in addition to territorial self-government, economic self-government, for the individual fields of economic life—namely, Chambers of Agriculture, Commerce, Industry, Arts and Crafts, Hired Labor, and others, united into a Supreme Economic Council of the republic, the collaboration of which with State authorities, in directing economic life and in the field of legislative proposals, will be determined by statutes."

The State will exercise supervision over self-government activities and may require by statute confirmation of their decisions by superior self-government organs or by Ministers. Appeals from penal decisions of administrative authorities are allowed to one superior body.

"Article 73. For the purpose of passing upon the legality of administrative acts in the field of State, as well as of self-government administration, a special statute will create Administrative Courts, basing their

organization on the coöperation of (lay) citizens and (professional) Judges, and culminating in a Supreme Administrative Court."

SECTION IV. JUDICIARY

The Constitution provides that justice is to be administered by courts, but leaves their organization, jurisdiction and procedure to be defined by legislation. Unless otherwise provided by statute Judges are appointed by the President and Justices of the Peace are elected. A Judge may be removed, suspended, transferred or pensioned against his will only by judicial decision, except when due to a change in the organization of the courts.

"Article 81. The courts have not the right to inquire into the validity of duly promulgated statutes."

Hearings in court are public unless otherwise provided by law. Juries are required in felony and political cases. A Supreme Court for civil and criminal causes is created, but its organization and the limits of its jurisdiction are left to the legislature, and also "a Special Competence Court (Tribunal of Conflicts)" to determine conflicts of jurisdiction between the administrative authorities and the courts.

SECTION V. GENERAL DUTIES AND RIGHTS OF CITIZENS

Citizenship is acquired by birth of Polish parents or by naturalization. Citizens may locate, move about and emigrate freely. All citizens are subject to military service and bound to obey the laws and ordinances of the State.

"Article 95. The Republic of Poland guarantees on its territory, to all, without distinction of extraction, nationality, language, race or religion, full protection of life, liberty and property.

Foreigners enjoy, on condition of reciprocity, rights equal to those of citizens of the Polish state, and have duties equal to those of such citizens, unless statutes expressly require Polish citizenship."

Articles 96, 97 and 98 make all citizens equal before the law without regard to birth, estate or titles, guarantee personal liberty against arrest except under judicial process and protection by the established courts, and prohibit punishments involving physical suffering.

"Article 99. The Republic of Poland recognizes all property, whether belonging personally to individual citizens or collectively to associations of citizens, institutions, self-government organizations, and the state itself, as one of the most important bases of social organization and legal order, and guarantees to all citizens, institutions and associations protection of their property, permitting only in cases provided by a statute the abolition or limitation of property, whether personal or collective, for reasons of higher utility, against compensation. Only a statute may determine what property—and to what extent for reasons of public utility—shall form the

exclusive property of the State, and in how far rights of citizens and of their legally recognized associations to use freely land, waters, minerals and other treasures of nature, may be subject to limitations for public reasons.

The land, as one of the most important factors of the existence of the nation and the State, may not be the subject of unrestricted transfer (commerce). Statutes will define the right of the State to buy up land against the will of the owners, and to regulate the transfer of land, applying the principle that the agrarian organizations of the Republic of Poland should be based on agricultural units capable of regular production, and forming private property."

Articles 100 and 101 guarantee against invasion of the home, seizure and search except as authorized by law under judicial process, and freedom of movement within and emigration from the state.

"Article 102. Labor is the main basis of the wealth of the republic, and should remain under the special protection of the State. Every citizen has the right to State protection for his labor, and in case of lack of work, illness, accident or disability, to the benefits of social insurance which will be determined by a special statute. The State has the duty of making accessible also moral guidance and religious consolation to citizens under its immediate care in public institutions, barracks, hospitals, prisons and charitable homes."

"Article 103. Children without sufficient parental care, neglected with respect to education, have the right to State aid within the limits to be determined by statute.

Parents may not be deprived of authority over their children except by judicial decision.

Special statutes determine the protection of motherhood.

Children under 15 years of age may not be wage earners; neither may women be employed at night, or young laborers be employed in industries detrimental to their health.

Permanent employment of children and young people of school age for wage earning purposes is forbidden."

Articles 104 to 113 guarantee freedom of speech and of the press within legal limits, secrecy of the mails, the right of petition, of the citizen to preserve his nationality and speak his mother tongue, freedom of conscience and religion, but not to evade the performance of public duties by reason of religious belief.

"Article 114. The Roman Catholic religion, being the religion of the preponderant majority of the nation, occupies in the State the chief position among enfranchised religions. The Roman Catholic Church governs itself under its own laws. The relation of the State to the Church will be determined on the basis of an agreement with the Apostolic See which is subject to ratification by the Sejm."

"Article 115. The churches of the religious minorities and other legally organized religious communities govern themselves by their own laws, religious communities govern themselves by their own laws, which the State may not refuse to recognize unless they contain rules contrary to law. The relation of the State to such churches and religions will be determined from time to time by legislation after an understanding with their legal representatives."

"Article 116. The recognition of a new or hitherto not legally recognized religion may not be refused to religious communities whose institutions, teachings and organizations are not contrary to public order or public morality."

"Article 117. Learned investigations and the publication of their results are free. Every citizen has the right to teach, to found a school or educational institution and to direct it if he complies with the requirements laid down by statute concerning the qualifications of teachers, the safety of the child intrusted to him, and a loyal attitude toward the State. All schools and educational institutions, public as well as private, are subject to supervision by State authorities within the limits prescribed by statutes."

"Article 118. Within the limits of the elementary school, instruction is compulsory for all citizens of the State. A statute will define the period, limits and manner of acquiring such education."

"Article 119. Teaching in State and self-government schools is gratuitous. The State will insure to pupils who are exceptionally able, but not well-to-do, scholarships for their maintenance in secondary and academic schools."

"Article 120. Instruction in religion is compulsory for all pupils in every educational institution, the curriculum of which includes instruction of youth under 18 years of age, if the institution is maintained wholly or in part by the State, or by self-government bodies. The direction and supervision of religious instruction in schools belongs to the respective religious community, reserving to the State educational authorities the right of supreme supervision."

"Article 121. Every citizen has the right to compensation for damage inflicted upon him by civil or military organs of State authorities, by an official act not in accordance with the right or duties of the service. The State is responsible for the damage, jointly with the guilty organs; action may be brought against the State and against officials, independently of any permission by public authority. Communes and other self-government bodies, as well as their organs, are responsible in the same manner. Special statutes will define the application of this principle."

"Article 122. The rules as to citizens' rights apply also to persons belonging to the armed force. Special military statutes define exceptions to this principle."

"Article 123. Armed force may be used only by request of a civil authority under strict obedience to statutes, for the purpose of putting

down disturbances or of enforcing the execution of legal rules. Exceptions to this principle are admissible only by virtue of statutes on the state of siege and of war."

"Article 124. A temporary suspension of citizens' rights; of personal liberty (Article 97), of inviolability of home and hearth (Article 100), of freedom of the press (Article 105), of secrecy of correspondence (Article 106), of the right of combining, meeting and forming associations (Article 108), may take place for the whole territory of the State or for localities in which it may prove necessary for reasons of public safety.

Such suspension may be directed only by the Council of Ministers, by permission of the President of the Republic, during a war or when an outbreak of war threatens, as well as in case of internal disturbances or of widespread conspiracies which bear the character of high treason and threaten the Constitution of the State or the safety of the citizens.

Such a decision of the Council of Ministers, if made while the Sejm is in session, must be immediately submitted to the Sejm for confirmation. If such a decision, to apply on a territory which comprises more than one Voyevodship be issued during an interval between the meetings of the Sejm, the Sejm meets automatically within eight days from the publication of the decision in order to take the proper step.

Should the Sejm refuse confirmation, the state of siege immediately loses its binding force. If the Council of Ministers directs a state of siege after the expiration of the term of the Sejm, or a state of siege after the expiration of the term of the Sejm, or after the dissolution of the Sejm, the decision of the Government must be submitted to the newly elected Sejm without delay, at its first meeting. These principles will be defined more in detail by a statute on the state of siege.

A statute on the state of war will define the principles of a temporary suspension of the above enumerated rights of citizens in time of war on the territory affected by war operations."

"Article 125. A change in the Constitution may be voted only in the presence of at least one-half the statutory number of Deputies or Senators respectively, by a majority of two-thirds of the votes.

The motion to change the Constitution must be signed by at least one-fourth of the total statutory number of Deputies and notice of such a motion must be given at least fifteen days in advance.

The second Sejm, which will meet on the basis of this Constitution, may revise this constitutional law by its own vote, taken by a majority of three-fifths in the presence of at least one-half the statutory number of Deputies."

"Article 126. This Constitution has binding force from the day of its publication, or in so far as the realization of its individual provisions is dependent on the issuing of special statutes on the day of their going into force.

All legal rules and institutions now in force which do not agree with

the rules of this Constitution, will, within a year from the voting of this Constitution, be submitted to the legislative body in order to be brought into harmony with the Constitution by legislation."¹

CONSTITUTION OF THE GERMAN REPUBLIC

PREAMBLE

The German people, united in all its branches and with the determination to build up and strengthen its domain in liberty and justice, to preserve peace, both at home and abroad, and to foster social progress, has adopted the following Constitution:

COMPOSITION AND FUNCTIONS OF THE GOVERNMENT

Article 1. The German National State is a Republic. The power of the State is derived from the people.

Art. 2. The territory of the nation consists of the territories of the German States. Other territories may be taken into the Government by national law, when their inhabitants, by a vote of self-determination, express such a desire.

Art. 3. The national colors are black-red-gold. The trade flag is black-white-red, with the national colors on the upper inside corner.

Art. 4. The universally recognized principles of the laws of nations are accepted as binding elements of the laws of the German Nation.

Art. 5. The power of the National State shall be exercised through the agencies of the Government on the basis of the Constitution in all matters affecting the Nation, and in all matters affecting the respective States through the agencies of such States on the basis of their respective institutions.

Art. 6. The Government has the exclusive right of legislation over:

1. Foreign relations.
2. Colonial matters.
3. State property, right of changing residence, immigration and emigration, and extradition.
4. Military organization.
5. Coinage.
6. Customs, including the unification of customs and trade districts and the free circulation of wares.
7. Posts, telegraphs and telephones.

Art. 7. The Government has right of legislation over:

1. Civil law.
2. Criminal law.
3. Judicial proceedings, including the execution of penalties and co-operation between departments.

¹ Current History, Vol. XIV, No. 2, pp. 358 to 367.

4. Passports and police for aliens.
5. Poor laws and vagrancy.
6. Press, associations, and assemblies.
7. Population policy; provisions affecting maternity, nurslings, young children and adolescents.
8. National health, veterinaries, protection of plants from diseases and pests.
9. Labor law, insurance, and protection of workmen and employes and employment agencies.
10. The organization of trade representation in the nation.
11. Provision for war veterans and their survivors.
12. The right of alienation of property.
13. The socialization of natural treasures and economic undertakings, as well as the production, organization, distribution, and evaluation of economic goods for the community.
14. Trade, weights and measures, issue of paper money, banks and stock exchanges.
15. Traffic in food articles and luxuries, as well as objects of daily need.
16. Industrial pursuits and mining.
17. Insurance.
18. Navigation, fishing on the high seas and along the coast.
19. Railways, internal navigation, communication by vehicles propelled by power on land, on sea, and in the air, construction of highways, in so far as general communications and national defense are concerned.
20. Theatres and cinematographs.

Art. 8. The Government further possesses legislative power over taxes and other sources of income, in so far as they may be claimed in whole or in part for its purposes. In the event that the Government claims taxes or other forms of income which formerly belonged to its confederated States, it will be bound to consider the maintenance of such States' vital means of support.

Art. 9. Whenever a need for centralized control occurs the Government has a right of legislation over:

1. Community welfare.
2. Protection of public order and security.

Art. 10. The Government in respect to legislation may lay down principles for:

1. The rights and duties of religious associations.
2. Schools, high schools, and scientific publications.
3. The official rights of all public bodies.
4. Land rights, land divisions, settlements and homesteads, title to landed property, habitations and distribution of inhabitants.
5. Intermittents.

Art. 11. The Government in respect to legislation may lay down principles for the permissibility and mode of collection of taxes, in order to prevent:

1. Injury to income or to trade relations of the nation.
2. Double taxation.
3. Excessive and burdensome taxes on the use of public ways of communication which hinder traffic, and of tollways.
4. Tax disadvantages of imported wares as compared with domestic products in trade between various States and State districts, or,
5. To exclude or to conserve important communal interests.

Art. 12. So long and in so far as the Government makes no use of its right of legislation, the confederated States possess the right of legislation. This does not apply to the exclusive legislation of the Government.

The Government has the right, whenever the welfare of the community is involved, to veto laws of confederated States related to the objects of Article 7, Section 13.

Art. 13. Government law transcends States' law. In case there should arise doubt or difference of opinion as to whether State legislation is in harmony with Government legislation, the proper officials of the Government or the central State officials, according to the specific prescription of a Government law, may resort to the decision of a highest national court.

Art. 14. The laws of the Government will be exercised through the State officials, unless the national laws provide otherwise.

Art. 15. The Government administration exercises supervision in matters over which the nation has the right of legislation.

In so far as the laws of the Government are to be exercised by State officials, the Government Administration may issue general directions. It has the power to send commissioners to the central State authorities and, with their approval, also to subordinate officials, to supervise the fulfillment of the Government laws.

The State Administrations are charged, at the request of the Government Administration, to eliminate defects in the execution of the national laws. In case of differences of opinion, the Government Administration, as well as the State Administration, may resort to the decision of the Supreme Court, in case another court is not prescribed by Government law.

Art. 16. Those officials charged with the direct administration of Government in the different States shall, as a rule, be appointed from citizens of the given State. The officials, employes and workmen of the Government Administration will, when desired, be employed in their home districts as far as proves possible, and whenever consideration of their training or of the demands of the service present no objection.

Art. 17. Every State must have a republican Constitution. The people's

representatives must be chosen in universal, equal, direct and secret vote cast by all German men and women citizens on the basis of proportional representation. The State Administration shall require the confidence of the people's representatives.

The election basis for popular representation applies also to the community elections. Through State law, however, the right to vote may be made to depend on the length of residence in the community to the extent of one year.

Art. 18. The division of the Government into States shall serve the highest economic and cultural interests of the people after most thorough consideration of the will of the population involved. Changes in State boundaries and the reconstruction of States within the nation may occur in the passing of a national law changing the Constitution.

If the States directly involved agree, a simple Government law will suffice.

A simple Government law will be sufficient, further, if one of the States involved does not agree with the territorial change or reconstruction is demanded by the will of the population and a predominating national interest requires it.

The will of the population is to be determined by referendum. The National Administration will sanction such a vote when a third of the inhabitants qualified to vote for the Reichstag, and who belong to the territory whose separation is opposed, demand it.

To determine a territorial change or reconstruction three-fifths of the vote cast, or at least a majority of votes cast by qualified voters, shall be required. Even when a separation of only a part of a Prussian administrative district, a Bavarian circle, or, in other States, a corresponding administrative district, is involved, the will of the population of the whole district under consideration must be determined. If a considerable dependence of the district to be separated on the whole region does not exist, the will of the population of the district to be separated may be pronounced sufficient on the basis of a special Government law.

After the consent of the population has been manifested by vote, the Government Administration must lay before the Reichstag a corresponding law for enactment.

In case a dispute arises over financial or property details when such union or separation is accomplished, the Supreme Court of Germany, if charged therewith by one of the parties, may give a decision.

Art. 19. In the case of constitutional disputes within a State in which no court exists that may resolve them, as well as in the case of disputes of a non-private nature between different States or between the Government and a State, the National Supreme Court, at the request of one of the parties in dispute, shall decide, in case another court of the Government does not have jurisdiction.

The National President executes the decision of the Supreme Court.

THE REICHSTAG

Art. 20. The Reichstag shall consist of the deputies of the German people.

Art. 21. The delegates are representatives of the whole people. They are subject only to their own conscience and shall not be bound by any orders.

Art. 22. The delegates shall be chosen on the basis of universal, equal, direct and secret vote by all men and women over the age of twenty, in accordance with the principles of proportional representation. The day for elections must be a Sunday or a public day of rest. Other details will be determined by the Government election law.

Art. 23. The Reichstag will be elected for four years. New elections must occur at latest after the expiration of sixty days following its expiration.

The Reichstag will convene at latest on the thirtieth day after election.

Art. 24. The Reichstag will meet each year on the first Wednesday in November at the seat of the National Government. The President of the Reichstag must call it earlier, if the President of the Republic, or at least a third of the members of the Reichstag demand it.

The Reichstag shall determine the close of the session and the day of reconvention.

Art. 25. The President of the Republic may dissolve the Reichstag, but only once for the same cause.

New elections shall occur at latest on the sixtieth day after such dissolution.

Art. 26. The Reichstag shall choose its President, as well as his representative, and its secretary. It shall determine its own order of business.

Art. 27. Between two adjournments of election periods the President and his representative of the last session shall continue all necessary business.

Art. 28. The President shall exercise the power of law and police duty in the Reichstag building. The management of the House is subject to him; he shall have power over the incomes and disbursements of the House, in accordance with the standard of Government economy, and shall represent the Government in all legal business and litigation arising in his administration.

Art. 29. The Reichstag's proceedings will be public. At the request of fifty members the public may be excluded on a two-thirds majority vote.

Art. 30. Truthful reports of the proceedings in open sessions of the Reichstag, of a Provincial Parliament or of their committees shall carry no responsibility.

Art. 31. A Court of Election Control shall be formed in the Reichstag. This court shall decide the question whether a delegate shall lose membership or not.

This Court of Election Control shall consist of members of the Reich-

stag, which the latter chooses for the election period, and of members of the Government Court of Administration, to be appointed by the President of the Republic at the suggestion of the President of this court.

This Court of Election Control shall form its decisions on the basis of public oral discussions conducted by three members of the Reichstag and two judicial members.

Besides the proceedings of the Court of Election Control, other proceedings will be instituted by a Government Commissioner appointed by the President of the Republic. These proceedings, however, shall be regulated by the Court of Election Control.

Art. 32. To make any decision of the Reichstag valid, a simple majority vote shall be required, in so far as the Constitution does not prescribe a different ratio of voting. For elections to be undertaken by the Reichstag the Committee on Rules may admit exceptions.

The determination of a decision will be regulated by the Committee on Rules.

Art. 33. The Reichstag and its committee may demand the presence of the National Chancellor and of any other Government Minister.

The Chancellor, the Government Ministers, and their duly appointed representatives shall have access to the sessions of the Reichstag and of its committees. The confederated States shall possess the right to send their plenipotentiaries to these sessions to interpret the views of their State Governments regarding the object of discussion. At their request the representatives of the State Government must receive a hearing during the discussion, and the representatives of the National Government must be heard also outside the order of the day. They shall, however, be subject to the control of the Chairman in matters of order.

Art. 34. The Reichstag has the right and, at the request of one-fifth of its members, the duty of appointing committees of investigation. These committees in open session shall bring to light the evidence which they, or the members proffering the request, shall consider required. Publicity may be excluded by the committee of investigation by a two-thirds majority vote. The Committee on Rules shall regulate the proceedings of the committee and determine the number of its members.

The judicial and administrative officials shall comply with requests made by these committees for information evidence, and the records of these officials shall on request be laid before them. The prescriptions of the penal code shall have application to the investigations of these committees and of the officials by them petitioned, but the secrecy of letter and parcel post, telegraph, and telephone services shall be undisturbed.

Art. 35. The Reichstag shall appoint a standing committee for outside matters, whose activity shall exist also outside the session and after the close of the election period until the reconconvocation of the new Reichstag. The sittings of this committee shall not be public, unless the committee by a two-thirds majority vote decides for publicity.

The Reichstag further shall appoint a standing committee to maintain the rights of the popular representatives as against the Government Administration outside of session and after the close of the election period.

These committees shall have the rights of investigating committees.

Art. 36. No member of the Reichstag or of a Provincial Parliament, shall at any time, because of his vote or because of any opinion expressed in the fulfilment of his duty, be judicially or officially prosecuted or in any way be held for responsibility outside the Assembly.

Art. 37. No member of the Reichstag or of a provincial Parliament shall, without approval of the house to which the delegate belongs, be subjected to investigation or arrest during the session on account of any action involving penalty, unless the member is arrested in the act, or, at latest, on the following day.

The same approval is required in the case of every other limitation of personal freedom which hinders the fulfilment of the delegate's legislative duties.

Every criminal proceeding against a member of the Reichstag or of a Provincial Parliament and every arrest or other limitation of his personal freedom shall, at the demand of the house to which the delegate belongs, be revoked for the period of the session.

Art. 38. The members of the Reichstag and the Provincial Parliaments are empowered to refuse evidence concerning persons who have given them information in their capacity as delegates, or to whom, in the fulfilment of their duties as delegates, they have given such information. In regard also to the seizure of documents their position shall be the same as that of all persons who by law are given the right of refusal of evidence.

A search or seizure may be undertaken in the precincts of the Reichstag or of a Provincial Parliament only with the consent of the President.

Art. 39. Officials and members of the army need no leave to fulfill their office as members of the Reichstag or of a Provincial Parliament.

If they become candidates for a seat in these bodies the necessary leave shall be granted them to prepare for their election.

Art. 40. The members of the Reichstag shall have the right of free transport over all German railway lines, and also compensation as prescribed by a national law.

THE NATIONAL PRESIDENT AND THE GOVERNMENT

Art. 41. The President of the Republic shall be chosen by the whole German people. Every German who has completed his thirty-fifth year is qualified for election. Further details are determined by a national law.

Art. 42. The National President, on assuming his office before the Reichstag, shall take the following oath:

I swear to consecrate all my energy to the welfare of the German people, to increase its advantages, to avert its injury,

to preserve the Constitution and the laws of the nation, to fulfill my duties conscientiously, and to deal justly with all.

The addition of a religious declaration shall be permissible.

Art. 43. The duration of the President's tenure of office shall be seven years. Reëlection shall be permissible.

Before the expiration of his term the President may be deposed by a referendum, at the request of the Reichstag. The decision of the Reichstag shall require a two-thirds majority vote. Through such decision the President shall be prohibited from further exercise of his office. Rejection of his deposition by a referendum shall count as a new election and shall entail the dissolution of the Reichstag.

The National President shall not be subject to prosecution without the sanction of the Reichstag.

Art. 44. The President may not at the same time be a member of the Reichstag.

Art. 45. The President shall represent the Nation in matters of international law. He shall in the nation's name conclude alliances and other treaties with foreign powers. He shall accredit and receive ambassadors.

Declaration of war and conclusion of peace shall be subject to national law.

Alliances and treaties with foreign states, related to subjects covered by national law, shall require the approval of the Reichstag.

Art. 46. The President shall appoint and dismiss Governmental officials and military officers, if not otherwise provided by law. He can exercise this right of appointment or dismissal through other officials.

Art. 47. The President has supreme command over all the military forces of the nation.

Art. 48. If any State shall not fulfill the duties prescribed for it by the Constitution or by Government laws the President of the Republic may hold it to such fulfillment with the aid of armed power.

The President, in the event that public security and order in the German Nation should be considerably disturbed or endangered, may take all necessary measures to reëstablish such public security and order, and, if required, to intervene with the aid of armed power. To this end he may provisionally abrogate, in whole or in part, the fundamental laws established in Articles 114, 115, 117, 118, 123, 124, and 153.

The President must immediately inform the Reichstag of all measures provided for by Paragraphs 1 or 2 of this Article. These measures may be revoked at the demand of the Reichstag.

In case of danger from delay the Provincial Government may take provisional measures of the kind mentioned in Paragraph 2 for its own territory. These measures may be revoked at the demand of the President of the Republic or of the Reichstag. Details are provided by a Government law.

Art. 49. The President of the Republic shall exercise for the Gov-

ernment the right of pardon. Government amnesties require a national law.

Art. 50. All arrangements and dispositions of the President of the Republic, including those concerning the army, to become valid must be countersigned by the Prime Minister or by duly qualified Government Ministers. Responsibility shall ensure upon this countersigning.

Art. 51. The President of the Republic, in case he is incapacitated, shall be represented by the National Chancellor. If such incapacity last for any considerable time, this representation shall be regulated by a Government law. The same provision shall apply in case of a premature vacancy of the Presidency until the new elections are completed.

Art. 52. The administration of the Government shall consist of the National Chancellor and the Government Ministers.

Art. 53. The Chancellor, and at his suggestion the Ministers of the Government, shall be appointed and dismissed by the President of the Republic.

Art. 54. The Chancellor and the Government Ministers shall require the confidence of the Reichstag for the fulfillment of their office. Any of them must withdraw in the event that the Reichstag by explicit resolution withholds its confidence.

Art. 55. The Chancellor shall preside in the Government Administration and shall conduct its affairs in accordance with the order of business which shall be determined by the Administration and approved by the President of the Republic.

Art. 56. The Prime Minister shall determine the line of policy and shall assume responsibility therefor to the Reichstag. Within this line each and every Government Minister shall conduct independently the field of activity allotted to him, assuming his own responsibility to the Reichstag.

Art. 57. The Ministers of Government are charged to lay before the Government Administration for discussion and decision all drafts of law, all matters so prescribed by Constitution or law, and all different opinions over various questions which concern the functions of several Government Ministers.

Art. 58. The Government Administration shall ratify its decisions on the basis of majority vote. In case of a tie the vote of the presiding officer shall be decisive.

Art. 59. The Reichstag is empowered to enter a complaint before the Supreme Court of the German Nation against the President of the Republic, the Prime Minister and the Government Ministers, on the ground of their having violated the Constitution or a Government law. The proposal to initiate this complaint must be signed by at least 100 members of the Reichstag and requires the approval of the majority prescribed for alteration of the Constitution. Other details will be regulated by the Government law applying to the National Supreme Court.

THE NATIONAL COUNCIL

Art. 60. A National Council (Reichsrat) shall be formed for representation of the German States in national legislation and administration.

Art. 61. In the National Council every State shall have at least one vote. In the case of the larger States one vote will be accorded to every million of inhabitants. Any excess equal at least to the population of the smallest State will be estimated as equal to a full million. No State shall be represented by more than two-fifths of all votes.

German-Austria, after its union with the German Nation, shall receive the right of participation in the National Council with the number of votes corresponding to its population. Until that time the representatives of German-Austria shall have a deliberative voice.

The number of votes shall be newly determined through the National Council after every general census.

Art. 62. In committees formed by the National Council from its own members, no State shall have more than one voice.

Art. 63. The States shall be represented in the National Council through members of their respective Governments. But half of the Prussian votes will be disposed of according to a State law, by the Prussian Provincial Administrations.

The States shall have the right to send as many representatives to the National Council as they have votes.

Art. 64. The Government Administration shall be bound to summon the National Council at the demand of one-third of its members.

Art. 65. The Presidency of the National Council and of its committees shall be filled by a member of the Government Administration. The members of the Government Administration shall have the right, and, on demand, the duty, to participate in the dealings of the National Council and its committees. During its sittings they shall, if they so desire, be given a hearing at any time.

Art. 66. The Government Administration, as well as every member of the State Council, are authorized to make proposals in the National Council. The National Council shall regulate the conduct of its proceedings through an order of business. The plenary sessions of the National Council shall be public. According to the order of business, the public may be excluded for special objects of discussion. A simple majority of the voters shall be decisive in voting.

Art. 67. The National Council shall be kept informed by the National Ministers of the conduct of national business. The proper committees of the National Council shall be summoned by the National Ministers for deliberations over important subjects.

NATIONAL LEGISLATION

Art. 68. Projects of legislation shall be introduced by the Government or from the body of the Reichstag. The laws of the nation shall be determined by the Reichstag.

Art. 69. The introduction of legislative projects by the Government Administration shall require the assent of the National Council. In the event that the Government Administration and the National Council shall not agree, the Government Administration may nevertheless introduce the project, but shall be bound to record the dissent of the National Council.

In case the National Council approve a project of legislation and the National Administration disapprove it, the latter shall introduce the project in the Reichstag with an exposition of its own standpoint.

Art. 70. The National President shall make a compilation of all laws created according to the Constitution and within one month publish it in the Government Legislative Record.

Art. 71. All Government laws shall come into force, unless otherwise specified, on the fourteenth day following the date of the issue of the Government Legislative Record in the nation's capital.

Art. 72. The publication of a Government law may be deferred for two months, if so demanded by one-third of the Reichstag. Laws which the Reichstag and the National Council declare as urgent may be published by the President of the Republic without regard to such demand.

Art. 73. A law approved by the Reichstag must be referred to the people before its publication if the President of the Republic so decrees within a month. A law whose publication is deferred at the demand of at least one-third of the Reichstag must be laid before the people for decision, if one-twentieth of qualified voters make such proposal.

A referendum shall further be resorted to if one-tenth of qualified voters express the desire that a project of law shall be proposed. A fully elaborated project of law must be the basis of such desire. The Government must lay this project of law before the Reichstag and explain its own stand regarding it. The referendum shall not occur if the desired project of law is accepted by the Reichstag without alteration. Only the President of the Republic may call a referendum for matters concerning the budget, tax laws, and salary payments. A national law shall regulate the procedure to be followed in a referendum or a project of law desired by the people.

Art. 74. The National Council shall have the right of veto against laws approved by the Reichstag. This veto shall be entered before the Reichstag by the Government within two weeks after ratification, and within two further weeks at latest must be circumstantiated.

In the event of such veto the law shall be laid before the Reichstag for a second decision. If the Reichstag and the National Council do not agree, the President of the Republic may within three months refer the

subject of dispute to a referendum. In case the President does not avail himself of this right, the law will be considered not to have been passed. If the Reichstag rejects the protest of the National Council on the basis of a two-thirds majority vote, the President shall publish the law in the form accepted by the Reichstag within three months, or else decree a referendum.

Art. 75. Through a referendum a Reichstag decision may be nullified only when a majority of the qualified voters participate in the voting.

Art. 76. In respect to legislation the Constitution may be altered. But decisions of the Reichstag on alteration of the Constitution shall be valid only when two-thirds of the lawful membership are present, and at least two-thirds of those present give their assent. Decisions of the National Council on alteration shall also require a two-thirds majority of all votes cast. In case a change of Constitution is determined by popular desire through a referendum, the assent of a majority of qualified voters shall be required. In the event that the Reichstag determine on an alteration of the Constitution against the protest of the National Council, the President of the Republic need not publish this law, if the National Council demand a referendum within two weeks.

Art. 77. The Government shall issue the general administrative decrees required for the execution of the national laws where no other provision is made by law. The assent of the National Council is necessary when the execution of the laws is incumbent on State officials.

NATIONAL ADMINISTRATION

Art. 78. Relations with foreign States concern the nation exclusively.

In matters regulated by provincial law the confederated States may conclude treaties with foreign States. These treaties require the consent of the nation.

Agreements with foreign States regarding change of national boundaries may be concluded by the nation on consent of the State involved. Alterations of the boundaries may occur only on the basis of a Government law, except in cases where mere correction of the boundaries of an uninhabited district is in question.

To assure the representation of interests arising for special States through their special economic relations or their proximity to foreign countries, the Government shall decide on the measures and arrangements required in concert with the States involved.

Art. 79. The defense of the nation concerns the nation. The military organization of the German people shall be placed under unified control by a Government law in which the special provincial institutions shall be given due consideration.

Art. 80. Colonial administration concerns the nation exclusively.

Art. 81. All German merchant ships shall constitute a unified trade fleet.

Art. 82. Germany forms a customs and trade territory surrounded by a common customs boundary. The customs boundary shall be identical with the frontier boundary. On the coast the shore line of the mainland and of the islands belonging to the national territory constitute the customs boundary. Exceptions may be determined for the customs line running along the seacoast and other waters. Foreign territories or parts of territories may be annexed to the customs territory by national treaties or agreements.

Parts of the customs territory may be excluded on special request. In the case of free ports this exclusion may occur only through a law altering the Constitution. Customs districts excluded may be annexed to a foreign customs district through national treaties or agreements.

All natural products, as well as arts and crafts products, may in the free intercourse of the nation be transported into, out of, or across the boundaries of the various States and communities. Exceptions may be permitted by a Government law.

Art. 83. Customs and excise of articles of consumption shall be administered through Government officials. Measures shall be provided for the administration of Government taxes through Government officials which shall enable the confederated States to maintain special State interests in the spheres of agriculture, trade, crafts, and industry.

Art. 84. The Government shall provide by law for:

1. The organization of the administration of taxes in the different States so far as shall be required for the unified and regular fulfillment of the national tax laws.
2. The organization and functions of the officials charged with supervision of the execution of the national tax laws.
3. Balance accounts with the confederated States.
4. The reimbursement of the costs of administration in the execution of the national tax laws.

Art. 85. All revenues and disbursements of the nation must be computed for every fiscal year and entered in the budget. The budget shall be confirmed before the beginning of the fiscal year by law. The expenses shall regularly be appropriated for one year; in special cases they may be appropriated for a longer period. In other cases provision in the budget law extending beyond the fiscal year or not relating to revenues and expenses of the nation or its administration shall be prohibited.

The Reichstag, in the drawing up of the budget, may not increase or add new expenses without the consent of the National Council. The consent of the National Council may be replaced according to the provisions of Article 74.

Art. 86. For the employment of all national revenue the Minister of Finance shall in the following fiscal year, to cover the responsibility of the administration, submit an account of reckoning to the National Council and to the Reichstag. The auditing of this account shall be regulated by national law.

Art. 87. In the matter of credit, moneys shall be procured only in cases of extraordinary need and regularly only for expenses connected with promotion. Such procuring of moneys, as well as the assumption by the Government of a security obligation, may occur on the strength of a Government law.

Art. 88. The post and telegraph services, together with the telephone service, concern the nation exclusively. The postage stamp symbols shall be the same for the whole nation.

The Government Administration shall, with the consent of the National Council, issue decrees laying down principles and duties in the use of means of communication. With the consent of the National Council it may extend this authority to the Postmaster General.

The Government Administration, with the consent of the State Council, shall appoint a supplementary council for advisory coöperation in postal, telegraph, telephone communications, and the regulation of prices.

Only the Government shall conclude treaties dealing with communications with foreign countries.

Art. 89. It is the nation's duty to take over railroads serving general traffic, with all their property, and to manage them as a unified system of communication.

Art. 90. With the taking over of the railroads the Government shall also take over the right of property alienation and the supreme State rights relating to railway organization. The National Supreme Court shall decide the scope of such rights in case of disputes.

Art. 91. The Government Administration, with the consent of the State Council, shall issue decrees regulating the construction, the management, and the traffic of railways. With the consent of the National Council it may extend this authority to the proper Government Minister.

Art. 92. The Government railways, irrespective of their budget and their accounts in the general budget and general accounts of the nation, shall be administered as an independent economic undertaking, which shall defray its own expenses, including interest and cancellation of the railway debt, and shall set aside a railway sinking fund. The amount of the cancellation and of the sinking fund, as well as the objects for which money shall be applied, shall be regulated by special laws.

Art. 93. Acting for the Government railways, with the consent of the National Council, the Government Administration shall appoint supplementary councils for advisory coöperation in matters of railway traffic and transportation charges.

Art. 94. In the event that the Government has taken over into its administration the railways of a certain district which serve general transport needs, within that district new railways serving such general transportation needs may be built only by the Government or by its consent. In case such construction of new railways, or alterations of existing railway organizations, concern the sphere of authority of the State police,

the Railway Administration, before decision, must grant a hearing to the State officials.

In case the Government has not yet taken over the railways, it may administer on its own account railways considered essential for general transportation, or for national defense, by virtue of Government laws and despite the opposition of the States, which they traverse, yet without infringing sovereign State rights, or it may give over construction rights to another, if necessary, also according right of alienation.

Every Railway Administration must consent to connection with other railway lines at the latter's expense.

Art. 95. Railways for general traffic not administered by the Government are subject to the supervision of the Government.

The railways thus subjected to Government supervision are to be controlled and equipped according to the same principles, to be determined by the Government. They shall be maintained in safe condition and to be extended as necessity demands. Transportation of persons and goods shall, as need arises, be provided for and equipment furnished.

In the supervision of the cost of transportation, the supervisors shall work toward a uniform and a low railway rate.

Art. 96. All railways, including those not serving general traffic needs, must comply with the demands of the Government for use of the railways for the purpose of national defense.

Art. 97. It is the duty of the Government to take over for administration all waterways serving general communications. After such taking over, such waterways serving general communications may be applied or extended only by the Government or with its consent. In administering, extending, or reconstructing such waterways the needs of agriculture and irrigation shall be preserved in coöperation with the States affected. The claims of the later shall also be regarded.

Every administration of waterways must agree to amalgamation with other inner waterways at the cost of the undertakers. The same obligation exists for the construction of a connecting way between inner waterways and railways.

In taking over the waterways the Government shall assume the right of alienation and authority over transportation cost and the policing of waters and navigation.

The task of building water communications in connection with the extension of natural waterways in the Rhine, Weser, and Elbe regions is to be undertaken by the Government.

Art. 98. Supplementary councils shall be formed with the consent of the National Council by specific decree of the Government Administration for coöperation in matters affecting waterways and national waterways.

Art. 99. Expenses on natural waterways shall be incurred only for such works, establishments, and other institutions as are destined to facilitate communication. In the case of the State and community in-

stitutions they must not exceed the expenses required for repair and maintenance. The costs of repair and maintenance for institutions not intended exclusively to facilitate communication, but also to further other purposes, may be increased by navigation expenses only to a relative degree. Sums paid for interest and debt cancellation shall be included in costs for maintenance.

The provisions of the preceding clause apply to the disbursements incurred for artificial waterways as well as for construction on such and in harbors.

The total costs of a waterway, a river district, or a system of waterways may be reckoned as fundamental in matters of inner navigation for the estimation of navigation expenses.

These provisions apply also to timber floating on navigable waterways.

Only the Government may impose other or higher taxes on foreign ships and their cargoes than on German ships and their cargoes.

For the procuring of means for the maintenance and equipment of the German system of waterways the Government may call on the participators in navigation for contributions in other ways.

Art. 100. To cover the cost of maintenance and construction of inner navigation routes any person who in any other way than through navigation derives profit from the construction of dams that shut off valleys may also be called upon for contribution, whenever several States are involved, or the Government bears the cost of the outlay.

Art. 101. It is the duty of the Government to take over as its own property and into its own administration all sea signals, especially light-houses, lightships, buoys, floats, and beacons. After such taking over sea signals may be repaired or improved by the Government or with its consent.

ADMINISTRATION OF JUSTICE

Art. 102. Judges shall be independent and subject only to the law.

Art. 103. Regular justice shall be administered through the national courts and through the State courts.

Art. 104. Judges administering regular justice shall be appointed for life. They may be permanently or temporarily removed from office, or transferred to another office, or retired against their will, only by virtue of judicial decision and for the grounds and in the forms provided by law. The law code may fix age limitations, on reaching which Judges may be retired. The temporary relief from office consequent on law is not affected by this article.

In case of a change in the organization of the courts or their jurisdiction districts the administration of justice in the provinces may decree transfer against desire to another court or removal from office, but only under allowances of full salary.

These provisions have no application to commercial Judges, rural Justices and jurymen.

Art. 105. Extraordinary courts are illegal. No one shall be removed from the jurisdiction of his legal Judge. Provisions made by law for martial courts and military courts are not affected hereby. Military courts of honor are suspended.

Art. 106. Military justice is to be suspended, except in time of war or on board warships. Further details are regulated by national law.

Art. 107. Administrative courts both of the nation and the States must, according to law, protect the individual against dispositions and provisions of administrative officials.

Art. 108. According to national law a National Supreme Court is established for the German Nation.

FUNDAMENTAL RIGHTS AND DUTIES OF THE GERMANS—THE INDIVIDUAL

Art. 109. All Germans are equal before the law. Men and women have fundamentally the same civil rights and duties. Public advantages or disadvantages of birth or rank are to be suspended. Titles of nobility shall be accepted only as a part of a name and may not be conferred any longer. Titles may be conferred only when they designate an office or a profession; academic degrees are not affected by this provision. Orders and insignias of orders may not be conferred by the State. No German may accept a title or order from a foreign Government.

Art. 110. Citizenship in the nation and in the States may be acquired or lost, according to the provisions of national law. Every citizen of a State is at the same time a citizen of the nation. Every German in every State in the nation has the same rights and duties as the citizens of the State itself.

Art. 111. All Germans enjoy the right of free travel through the whole nation. Every one has the right of sojourn and settlement in any place within the nation, the right to acquire real estate and to pursue every means of livelihood. Limitations require the issuance of a Government decree.

Art. 112. Every German has the right to emigrate to countries outside Germany. Emigration may be limited only by national law. All citizens of the nation have right of protection by the Government both within and without the national boundaries as against foreign countries. No German may be delivered over to a foreign Government for prosecution or punishment.

Art. 113. Those elements of the nation speaking a foreign language may not be impaired judicially or administratively in their free and popular development, especially in the use of their mother tongue for instruction, or in matters of internal administration and the administration of justice.

Art. 114. Freedom of the person cannot be impaired. An impairment or withdrawal of personal liberty through public power is admissible only as prescribed by law. Persons, whose freedom is taken from them, are to be informed at least on the following day by what official and on what

grounds their liberty was taken from them, and they shall immediately receive an opportunity to present objections against this loss of freedom.

Art. 115. The home of every German is his place of refuge and cannot be violated. Exceptions are admissible only as prescribed by law.

Art. 116. No action can be penalized, if penalty is provided by law, before the action has been committed.

Art. 117. Secrecy of letters and of postal, telegraph and telephone services cannot be impaired. Exceptions may be admissible only as prescribed by national law.

Art. 118. Every German has the right within the limits of the general laws to express his opinion by word, in writing, printing, by picture, or in any other way. No connection with his labor or employment shall hinder him in the exercise of this right, and no one may injure him if he makes use of this right.

No censorship exists, though different provisions may be passed by law in the case of moving pictures. Legal measures are also permissible for combatting obscene and indecent literature, as well as for the protection of youth at public plays and spectacles.

THE SOCIAL LIFE

Art. 119. Marriage, as the foundation of family life and of the maintenance and increasing of the nation, is under the particular protection of the Constitution. It is based upon the equal rights of both sexes. The maintaining of the purity, the health, and the social advancement of the family is the task of the State and the communities. Families with numerous children have a claim for compensating care. Motherhood has a claim upon the protection and care of the State.

Art. 120. The education of offspring to physical, mental, and social efficiency is the highest duty and natural right of parents, whose activities are watched over by the political community.

Art. 121. Illegitimate children are to be provided by legislation with the same conditions for their physical, mental and social development as those of legitimate children.

Art. 122. Youth is to be protected against exploitation, as well as against a lack of moral, mental, or physical guarantees. The State and the communities are to take the necessary steps to this end. Compulsory measures for welfare can be ordered only on the basis of the law.

Art. 123. All Germans have the right to gather in meetings peaceably and unarmed without announcement or particular permission. Meetings in the open may be made liable to previous announcement by a national law and, in the presence of immediate danger to the public order, may be forbidden.

Art. 124. All Germans have the rights to form societies or associations for purposes not contrary to the penal law. This right cannot be limited through preventive measures. The same provisions apply to religious societies and unions.

Every association has the right to acquire legal character in accordance with the civil law. No society may be refused this right because it pursues a political, social-political, or religious object.

Art. 125. Liberty of the suffrage and its secrecy are guaranteed. Details will be laid down by the election laws.

Art. 126. Every German has the right to appeal to the competent authorities or to the representatives of the people with written requests or grievances. This right may be exercised by individuals as well as by several persons together.

Art. 127. Communities and community associations have the right of self-administration within the limits of the law.

Art. 128. All citizens of the State, without distinction, are to be admitted to public office according to the provisions of the law and their abilities. All exceptional regulations against female officials and employes are set aside. The principles of official relations are to be regulated by a national law.

Art. 129. The employment of State officials is for life, in so far as it is not provided differently by law. Pension-salaries and pensions for relatives and dependents are regulated by law. The legally acquired rights of the officials are inviolable. The legal way is open to officials for their property claims. The officials can be suspended, either temporarily or definitely, or transferred to another position with smaller salary, only under legal provisions.

Against every demand for punishment in the service a form of appeal and a possibility for the reopening of the trial are to be provided. In the investigation of the person of an official, facts against the official are to be recorded only when the official has had the opportunity to express himself as to the complaint. The official is to be permitted to inspect the complaint.

The inviolability of the acquired rights and the maintenance of the legal way for property complaints are especially assured to the professional soldier. For the rest, their position is regulated by national law.

Art. 130. The officials are servants of the whole community, not of a party. To all officials freedom of their political beliefs and right of association is assured. The officials receive, according to special provisions of the national law, special representation as officials.

Art. 131. In case an official during the exercise of his public duties violates the duties which he owes to a third person, the responsibility comes upon the State or the authority in whose services the officials is. The right to take counter action against the official is reserved by the State. The regular lawful way shall not be excluded. The detail regulation comes under the apportioning legislation.

Art. 132. Every German, according to the provision of the law, has the duty to accept honorary offices.

Art. 133. All citizens are obliged, according to law, to perform personal service for the State and for the community. The duty of military service is regulated according to the National Army law. This determines also how far certain fundamental provisions are to be restricted for the members of the army in order that they may fulfill their duties and that military discipline may be preserved.

Art. 134. All citizens, without any distinction, shall contribute according to their means to carrying all public burdens, according to the provisions of the law.

RELIGION AND RELIGIOUS SOCIETIES

Art. 135. All inhabitants of the nation shall enjoy complete liberty of worship and conscience. Undisturbed enjoyment of religious liberties is assured by the Constitution and is under national protection. This provision leaves the general national law untouched.

Art. 136. Civic rights, State rights and duties are neither conditioned nor limited by the enjoyment of religious liberties. The enjoyment of civic and State rights as well as admission to public office are independent of religious beliefs. No one is bound to reveal his religious beliefs. The authorities have the right to ask for the affiliation to a religious society in so far as rights and duties depend thereon, or in case a lawfully organized census demands such information.

No one is to be forced to participate in church duties or church festivities, or to take part in religious exercises, or be compelled to give a religious oath.

Art. 137. No State Church is recognized. Freedom of organization for religious purposes is assured. The union of religious societies within the nation is not restricted. Every religious society regulates and administers its affairs independently within the limits of the law. It appoints its officers without the coöperation of the State or the municipality. Religious societies acquire legality according to the prescriptions of the civic laws. The religious societies remain organizations of public law, in so far as they were such before. To other religious societies at their request the same rights are to be accorded, if by their constitution and the number of their members they give the guarantee of permanency. An amalgamation into a federation of a number of such public religious societies makes of such federation a public corporation.

Religious societies, which are recognized public corporations, are entitled, on the basis of the civic tax lists, to raise taxes according to the provisions of the respective State laws.

Societies which have as their aim the cultivation of a world conception of life are put on an equal footing with religious societies.

In so far as the carrying out of this provision requires a further regulation, it comes under the respective State laws.

Art. 138. State contributions to religious societies based on public

law, contract or special legal titles are abrogated by State legislation. The fundamental laws pertaining to this come under national laws.

The right of property and other rights of public religious societies and religious assemblies in connection with institutions devoted to purposes of worship, teaching and charity purpose, as well as religious foundations and other forms of property are guaranteed.

Art. 139. Sunday and national holidays remain lawfully protected as days of rest and spiritual elevation.

Art. 140. To the members of the army is given the necessary time for the fulfillment of their religious duties.

Art. 141. In so far as the need of worship and spiritual advice exists in hospitals, houses of correction, or other public institutions, religious societies are permitted to hold religious meetings. No compulsion shall obtain.

EDUCATION AND SCHOOLS

Art. 142. Art, science, and their teachings are free. The State accords them protection and takes part in their promotion.

Art. 143. The education of the young is to be provided for through public institutions. In their establishment the nation, States and communities work together.

The instruction of teachers is to be regulated on a uniform basis for the nation according to the generally recognized principles of higher education.

The teachers in the public schools have the rights and duties of State officials.

Art. 144. The entire school system is under the supervision of the State; it can accord participation therein to the communities. The school supervision will be exercised by technically trained central officials.

Art. 145. There shall be general compulsory attendance at school. The duty will be principally attended to by the popular school with at least eight years of instruction, and the following continuation schools up to the completion of the eighteenth year. Instruction books and other apparatus in the popular and continuous schools are free.

Art. 146. The public school system is to be organically constructed. Upon a basic school for every one is erected the intermediate and high school system. For this superstructure the rule for guidance is the multiplicity of life's callings, and the acceptance of a child in a particular school depends upon his qualifications and inclinations, not upon the economic and social position or the religion of his parents.

Nevertheless, within the communities, upon the proposal of those entitled to instruction, there shall be erected popular schools of their faith or view of the universe, in so far as this does not interfere with a regulated conduct of the schools in the sense of Paragraph 1. Details will be laid down in the State legislation, according to the principles of a national law.

For the attendance of those in poor circumstances at the intermediate and higher schools, public means are to be supplied by the nation, States, and communities, with especial assistance to the parents of children regarded as adapted for education in the intermediate and higher schools, until the instruction period is ended.

Art. 147. Private schools as a substitute for public schools require the approval of the State and are subject to the provincial laws. Approval is to be given if the private schools are not inferior to the public schools in their objects, their equipment, and the scientific competency of their teaching staffs; and when a division of the pupils according to the amount of property possessed by their parents is not demanded. Approval is to be withheld when the economic and legal status of the teachers is not sufficiently guaranteed.

Private popular schools are to be allowed only when, for a minority entitled to instruction, whose desires must be considered according to Article 146, Paragraph 2, there exists in a community no public school of a given faith or world conception; or when the educational administration recognizes a particular pedagogical interest. Private preparatory schools are to be abolished. The existing law for private schools that do not serve as substitutes for the public schools remains in force.

Art. 148. Moral education, civic sentiment, and personal and professional ability in the spirit of popular Germanism and of international reconciliation are to be striven for in all the schools. In giving instruction in public schools care must be taken not to hurt the feelings of those who think differently. Civics and labor instruction are branches of instruction in the schools. Every pupil will receive a copy of the Constitution upon completing his school duties. The system of popular education, inclusive of the popular high schools, is to be promoted by nation, States, and communities.

Art. 149. Religious instruction is a regular branch of school instruction, except in the case of schools acknowledging no creed, or worldly schools. The imparting of religious instruction will be regulated by school legislation. It will be given in accord with the principles of the religious societies concerned, without prejudice to the State's right of supervision.

The imparting of religious instruction and the using of church forms are left to the desire of the teachers, and the participation of the pupils in religious studies and in church solemnities and acts is left to those who have the right of determining the child's religious education.

The theological faculties of the colleges are maintained.

Art. 150. The monuments of art, history, and nature, as well as the landscape, enjoy the protection and care of the State. It is the affair of the nation to prevent the removal of German art possessions to foreign lands.

ECONOMIC LIFE

Art. 151. The regulation of economic life must correspond to the principles of justice, with the object of assuring to all a life worth living. Within these bounds the economic liberty of the individual is to be assured.

Legal compulsion is admissible only for the safeguarding of threatened rights or in the service of predominant demands of the public good.

The freedom of trade and industry is safeguarded according to the national laws.

Art. 152. There is freedom of contract in economic relations within the limits of the law. Usury is forbidden. Legal arrangements that are in conflict with decent customs are null and void.

Art. 153. Property is safeguarded by the Constitution. Its composition and limits are defined by the laws.

Confiscation can be carried out only for the benefit of the community as a whole and with due process of law. There will be appropriate compensation, as far as a national law may not otherwise prescribe. In the case of dispute as to the amount of the compensation the ordinary courts may be appealed to in so far as national laws do not provide otherwise. Confiscation by the nation from States, communities, and societies organized for the public welfare may be effected only with compensation. Property implies a duty. Its use should at the same time be a service to the general welfare.

Art. 154. The right of inheritance is safeguarded according to the civil law.

The State's part in the inheritance will be provided for by law.

Art. 155. The division and use of the land will be watched over by the State in such a way as to prevent its misuse and to promote the object of insuring to every German a healthful dwelling, and to all German families, especially those with numerous children, a dwelling and economic homestead corresponding to their needs. War veterans are to be specially considered in the homestead law to be created.

Real estate, the acquisition of which is necessary to meet housing needs, to encourage settling and bringing of land under cultivation, or to promote agriculture, may be expropriated. Entailments are to be dissolved.

The working and exploitation of the land is a duty of the land owner toward the community. An increase of value of land arising without the applying of labor or capital to the property is to be made to serve the community as a whole.

All mineral treasures and all economically useful forces of nature are under the control of the State. Private rights are to be turned over to the State through legislation.

Art. 156. The nation may through law, without detriment to compensation, and with a proper application of the regulations covering expropriation, transfer to public ownership private economic enterprises adapted for socialization. The nation may itself take part in the ad-

ministration of economic undertakings and societies or transfer such right to States or communities, or insure itself a dominating influence in some other way.

Furthermore, the nation, in the case of pressing necessity for the purpose of public business, may combine through law economic enterprises and societies on the basis of self-administration, with the object of insuring the coöperation of all the working sections of the people, of allowing employers and employes to participate in the administration, and of regulating the production, preparation, distribution, use and prices, as well as the import and export of economic goods, according to general economic principles.

The coöperation of industry and husbandry and their associations upon their request and with consideration for their composition and peculiarities, may be embodied in the common system of economics.

Art. 157. Labor power is under the special protection of the nation. The nation will create uniform labor laws.

Art. 158. Intellectual labor, the right of the discoverer, the inventor and the artist, enjoy the protection and care of the nation.

The creations of German science, art and technique are to be protected and promoted abroad through international agreement.

Art. 159. The right of combination for the defense and promotion of labor and economic conditions is guaranteed to everybody and to all professions. All agreements and measures which attempt to limit or impede this liberty are illegal.

Art. 160. Any one employed as an office employe or a worker has the right to the time off necessary to exercise his civic rights and, so far as it does not materially injure the business, to fill honorary public offices conferred upon him. The law will define how far he may demand compensation.

Art. 161. For the purpose of conserving health and the ability to work, of protecting motherhood and of guarding against the economic effects of age, debilities and the vicissitudes of life, the nation will create a comprehensive system of insurance, with the authoritative coöperation of the insured.

Art. 162. The nation favors an international regulation of the legal status of the workers that strives for a general minimum measure of social rights for the whole working class of the world.

Art. 163. It is the moral duty of every German, without prejudice to his personal liberty, so to use his intellectual and physical powers as is demanded by the welfare of the community.

Every German shall receive the possibility of earning his living through economic labor. In so far as the appropriate opportunity to work cannot be given to him his necessary maintenance will be looked after. Details will be arranged through special national laws.

Art. 164. The independent middle class in agriculture, industry, and

trade is to be favored in legislation and administration, and it is to be protected against being overburdened and made victims of extortion.

Art. 165. The workers and office employees are qualified to take part with equal rights and in coöperation with the employers in the regulation of wage and labor conditions, as well as in the entire economic development of the productive forces. The organizations on both sides and their unions are recognized.

The workers and office employees receive legal representation in the Factory Workers' Councils as well as in the District Workers' Councils grouped according to economic districts, and in a National Workers' Council, for the purpose of looking after their social and economic interests.

The District Workers' Councils and the National Workers' Council meet together with the representatives of the employers and of other interested circles of people in District Economic Councils and a National Economic Council for the purpose of carrying out the joint economic tasks and for coöperating in the putting into effect of the laws of socialization. The District Economic Councils and the National Economic Council are to be formed so as to provide for the proper representation therein of all the important trade groups according to their economic and social importance.

Social political and economic political drafts of laws of fundamental importance are to be submitted by the National Government to the National Economic Council for its opinions before presentation. The National Economic Council has the right itself to propose such plans of laws. If the National Government does not agree with it, it has the right, nevertheless, to present the proposal to the Reichstag with an exposition of its standpoint. The National Economic Council may have its proposal represented by one of its members before the Reichstag.

The Workers' and Economic Councils may have conferred upon them the powers of control and administration in the fields turned over to them.

The building up of the Workers' and Economic Councils and the defining of their duties, as well as their relations to other social self-administrative bodies, are exclusively matters of the nation.

TRANSITORY AND FINAL REGULATIONS

Art. 166. Until the establishment of the National Administrative Court the National Court will take its place in forming the Court for Examining Elections.

Art. 167. The regulations of Article 18, Paragraphs 3 to 6, become effective two years after the announcement that the Constitution has gone into force.

Art. 168. Until the promulgation of the State law provided for in Article 63, but at the most for only one year, all the Prussian votes in the National Council may be cast by members of the Government.

Art. 169. The National Government will determine when the regulation laid down in Article 83, Paragraph 1, is to become effective.

Art. 170. The Postal and Telegraph Administrations of Bavaria and Württemberg will be taken over by the nation not later than April 1, 1921.

If no understanding has been reached over the terms of their taking over by Oct. 1, 1920, the matter will be decided by the Supreme Court.

The former rights and duties of Bavaria and Württemberg remain in force until the act of taking over. Nevertheless, the postal and telegraph traffic with neighboring foreign countries will be regulated exclusively by the nation.

Art. 171. The State railroads, waterways, and ocean signal systems are to be taken over by the nation not later than April 1, 1921.

If no understanding has been reached over the terms of their taking over by Oct. 1, 1920, the matter will be decided by the Supreme Court.

Art. 172. Until the national law regarding the Supreme Court becomes effective its powers will be exercised by a Senate of seven members, four of whom are to be elected from among its members by the Reichstag and three by the National High Court. This Senate will arrange its own methods of procedure.

Art. 173. Until the enactment of a national law according to Article 138, the existing State contributions to the religious societies based upon law, agreement, or special legal titles will continue.

Art. 174. Upon the enactment of the national law provided for in Article 146, Paragraph 2, the legal status will continue. The law will pay special attention to districts of the nation where a system of schools not separated according to faiths legally exists.

Art. 175. The regulations of Article 109 do not apply to orders and decorations conferred for services in the war years 1914-1919.

Art. 176. All public officials and members of the army are to be sworn upon this Constitution. The details will be fixed by an order of the national President.

Art. 177. Where in the existing laws it is provided that the oath be taken in connection with a religious form, the taking of the oath can be made legal by having the swearer say, leaving out the religious form, "I swear." For the rest the contents of the oath provided for in the laws remains undisturbed.

Art. 178. The Constitution of the German Empire of April 16, 1871, and the law covering the temporary exercise of the national authority of Feb. 10, 1919, are annulled.

The other laws and regulations of the nation remain in force, in so far as they are not in contradiction with this Constitution. The arrangements contained in the Peace Treaty signed on June 28, 1919, at Versailles, are not affected by the Constitution.

Ordinances of the authorities legally issued on the strength of previously existing laws retain their power until annulled through other ordinances or legislation.

Art. 179. In so far as reference is made in laws or ordinances to regulations and institutions which are abolished by this Constitution their places will be taken by the corresponding regulations and institutions of this Constitution. In particular the place of the National Assembly will be taken by the Reichstag, that of the Committee of States by the National Council, and the place of national President elected on the strength of the law covering the temporary exercise of the national authority, by the national President elected under the authority of this Constitution.

The power to issue ordinances conferred upon the Committee of States through the former provisions is transferred to the national Government; the Government in issuing ordinances requires the approval of the National Council as laid down in this Constitution.

Art. 180. Until the convening of the first Reichstag the National Assembly will function as the Reichstag. Until the installing of the first national President his office will be filled by the national President elected on the strength of the law covering the temporary exercise of the national authority.

Art. 181. The German people have adopted and decreed this Constitution through its National Assembly. It goes into effect upon the day of its publication.

Weimar, July 31, 1919.¹

CONSTITUTION OF THE UNITED STATES OF AMERICA

PREAMBLE

We the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Sec. 2. The house of representatives shall be composed of members chosen every year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to

¹ Current History, Vol. XI, p. 86.

the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Sec. 3. The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.¹

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; . . . When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as a part of the constitution.¹

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sec. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absence members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the sessions of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from

¹ As amended in 1913.

the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

Sec. 9. "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imports, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

OF THE EXECUTIVE

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign

and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the vote shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]*

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected. The president shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Sec. 2. The president shall be commander-in-chief of the army and

*See Twelfth Amendment.

navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

OF THE JUDICIARY

Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges both of the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more

states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sec. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state may be formed by the junction of two or more states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging

to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United

States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

New Hampshire

JOHN LANGDON,
NICHOLAS GILHAM.

Massachusetts

NATHANIEL GORMAN,
RUFUS KING.

Connecticut

WM. SAM'L JOHNSON,
ROGER SHERMAN.

New York

ALEXANDER HAMILTON.

New Jersey

WIL. LIVINGSTON,
WM. PATTERSON,
DAVID BREARLEY,
JONA. DAYTON.

Pennsylvania

B. FRANKLIN,
ROBT. MORRIS,
THOS. FITZSIMONS,
JAMES WILSON,
THOMAS MIFFLIN,
GEO. CLYMER,
JARED INGERSOLL,
GOUV. MORRIS.

Delaware

GEO. READ,
JOHN DICKINSON,
JACO. BROOM,
GUNNING REDFORD, JR.,
RICHARD BASSETT.

Georgia

WILLIAM FEW,
ABR. BALDWIN.

Maryland

JAMES MCHENRY,
DANL. CARROLL,
DAN. OF ST. THOS. JENIFER.

Virginia

JOHN BLAIR,
JAMES MADISON, JR.

North Carolina

WM. BLOUNT,
HU: WILLIAMSON,
RICH'D DOBBS SPAIGHT.

South Carolina

J. RUTLEDGE,
CHARLES PINCKNEY,
CHAS. COTESWORTH PINCKNEY,
PIERCE BUTLER.

Attest: WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION

Proposed by Congress and ratified by the Legislatures of the several states pursuant to the fifth article of the original constitution.

Article I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II. A well-regulated militia, being necessary to the security of a

free state, the right of the people to keep and bear arms shall not be infringed.

Article III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Article VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Article XII, Sec. 1. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in

distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of vice-president of the United States.

Article XIII, Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.¹

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV,² Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several

¹ Declared Adopted Feb. 18, 1865.

² Declared Adopted July 28, 1868.

States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a senator or representative in congress or elector of president or vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The congress shall have power to enforce by appropriate legislation the provisions of this article.

Article XV, Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

Sec. 2. The congress shall have power to enforce this article by appropriate legislation.

(Declared adopted March 30, 1870.)

Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

(Ratified Feb'y, 1913.)

Article XVII. The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate,

the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as a part of the Constitution.¹

Article XVIII, Section 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.²

Article XIX. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex. Congress shall have power to enforce this article by appropriate legislation.³

¹ Ratification proclaimed May 31, 1913.

² Ratification proclaimed January 29, 1919.

³ Ratification proclaimed August 26, 1921.

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